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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1881.

No. ~~330~~ 75

BATES COUNTY, MISSOURI, PLAINTIFF IN ERROR,

vs.

VALENTINE WINTERS AND JONATHAN H. WINTERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 13, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 390.

BATES COUNTY, MISSOURI, PLAINTIFF IN ERROR,

vs.

VALENTINE WINTERS AND JONATHAN H. WINTERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the circuit court of the United States for the eastern division of the western district of Missouri, Greeting:

[SEAL.]

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the November term, 1880, thereof, between Valentine Winters and Jonathan H. Winters, plaintiffs, and Bates County, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said Bates County, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this ninth day of April, in the year of our Lord one thousand eight hundred and eighty-one.

Issued at office in the city of Jefferson with the seal of the circuit court of the United States for the eastern division of the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—
ARNOLD KREKEL, *Judge.*

2 *Return to Writ.*

UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case together with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said circuit court, at the city of Jefferson, this sixth day of June, A. D. 1881.

[SEAL.] H. C. GEISBERG, *Clerk.*

Endorsed: No. 1151. United States circuit court, eastern division, western district of Missouri. Valentine Winters *et al. vs.* Bates

County. Writ of error. To the circuit court of the United States for the eastern division of the western district of Missouri.

3 The United States of America to Valentine Winters and Jonathan Winters, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the eastern division of the western district of Missouri, wherein Bates County, in the State of Missouri, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Arnold Krekel, judge of the circuit court of the United States for the western district of Missouri, this ninth day of April, in the year of our Lord one thousand eight hundred and eighty-one.

ARNOLD KREKEL, *Judge.*

4 UNITED STATES OF AMERICA, *Western District of Missouri,* } *ss:*

I hereby acknowledge due service of the within citation, this 20th day of April, A. D. 1881.

T. K. SKINKER,
Attorney for Defendants in Error.

Endorsed: 1151. United States circuit court, eastern division, western district of Missouri. Valentine Winters *et al. vs.* Bates County. Citation.

5 UNITED STATES OF AMERICA, *Western District of Missouri, Eastern Division,* } *Sct.:*

Pleas before the honorable circuit court of the United States in and for said district and division, at the November term, A. D. 1880, in case of—

VALENTINE BATES *et al.*
vs.
BATES COUNTY, IN THE STATE OF MISSOURI. } No. 1151.

Be it remembered that heretofore, to wit, on the 11th day of October, A. D. 1878, it being in vacation of the circuit court of the United States in and for the western district of Missouri, the following entry appears of record, to wit:

VALENTINE WINTERS *et al.*
vs.
BATES COUNTY. } 1151.

This day a mandate from the Supreme Court of the United States

is received and filed in the above-entitled cause. And the mandate so filed as aforesaid is in the words and figures following, to wit:

Mandate.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the western district of Missouri, Greeting:

Whereas lately in the circuit court of the United States for the western district of Missouri, before you, or some of you, in a cause between Jonathan H. Winters and Valentine Winters, plaintiffs, and the County of Bates, in the State of Missouri, defendant, wherein the judgment of the said circuit court entered in said cause
6 on the 28th day of April, A. D. 1875, is in the following words, viz:

"It is now considered by the court that the plaintiffs, Valentine Winters and Jonathan H. Winters, recover against the defendant, the County of Bates, in the State of Missouri, the said sum of six thousand two hundred and fifty-one dollars and fourteen cents ($6,251.14), the amount so found to be due by the court, and the costs herein expended, and that execution issue therefor."

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-seven, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that the said defendant recover against the said plaintiffs, Jonathan H. Winters *et al.*, one hundred and twenty dollars for its costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court with directions to proceed with a new trial in conformity with the opinion of this court. 25th February, 1878.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause in conformity with the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice
7 of said Supreme Court, the eighth day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

Costs of defendant:

Clerk	$100 00
Attorney	20 00
	$120 00

Taxed by— D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Endorsed: 1151. No. 210. October term, 1877. Mandate. Supreme Court United States. Bates Co. *vs.* Winters. Filed Oct. 11th, 1878. H. C. Geisberg, clerk.

And afterwards, at a regular stated term of said circuit court, begun and held on the third Monday, the 18th day, of November, 1878, the following further proceedings were had in said case on said last-mentioned day, to wit:

VALENTINE WINTERS
vs.
BATES COUNTY. } 1151.

By consent of parties it is ordered that this cause be continued.

And afterwards, at a regular stated term of the circuit court of the United States in and for the western district of Missouri, eastern division, begun and held on the third Monday, the 21st day of April, 1879, at Jefferson City, in said division, the following further proceedings were had in said case on said last-mentioned day, to wit:

VALENTINE WINTERS *et al.*
vs.
BATES COUNTY. } 1151.

This day comes the plaintiff, by T. K. Skinker, Esq., his attorney, and the defendant, by Messrs. Bassett, Glover, and Shepley; thereupon there is filed herein a stipulation as to facts, and also waiving a jury herein.

And said stipulation and jury waiver, so filed as aforesaid, is in the words and figures following, to wit:

8 *Stipulation as to Facts and Jury Waiver.*

U. S. Circuit Court, Western Dist. Mo.

JONATHAN WINTERS and VALENTINE WINTERS, Plaintiffs,
vs.
BATES COUNTY, Defendant.

It is stipulated and agreed by and between the parties hereto that the following shall be taken to be the facts in this case, and either party may read this stipulation at the trial:

1. Under and in pursuance of an order made on the 14th day of June, 1870, by the county court of Bates county, A. L. Betz, the commissioner therein appointed to subscribe to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, went to Lexington, Mo., for that purpose; that he carried with him a copy of the records of said county court for the purpose of showing his authority to act in the premises; that the company then had no books on which the subscription could be made, by reason whereof the said Betts did not make the subscription; that thereupon the said Betts sought to withdraw or reclaim the papers he had taken with him, but said company refused to allow him to do so; that said Betts again went to Lexington to make such subscription, but after he got there and saw the condition of the board he did not make the subscription, and made report to the said county court of his acts and doings on the 19th day of December, 1870. For copy of this report see page 41 of the transcript of the record of this case in the Supreme Court of the United States, filed October 14th, 1875, printed copy of which it is agreed may be read in evidence; that no subscription of stock was, in fact, made and signed by said commissioner on the books of company, and that no certificate of stock was, in fact, issued to said township prior to the consolidation which was made between the Lexington, Chillicothe and Gulf Railroad Company and the Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company on the 4th
9 day of October, 1870; that on the 19th day of December, 1870, said county court made the following order, to wit, (see order on page 42 of above-mentioned transcript,) approving report of A. L. Betz; that on the 22d day of December, 1870, the following other and further proceedings were had, to wit, (see order of that date on page 42 of above transcript;) that on the 18th day of January, 1871, the county court aforesaid made the following order, to wit, (see order of that date on page 42 of above transcript;) that James W. Boreing, the commissioner appointed by the order of said county court, on the 18th day of January, 1871, made said subscription on the books of the Lexington, Lake and Gulf R. R. Co., which was then accepted by the said Lexington, Lake and Gulf R. R. Co., and a certificate of stock for the first time issued; that the said Lexington, Chillicothe and Gulf R. R. Co. was incorporated under the general laws of Mo. on the 25th day of August, 1869, and its articles of association are as set out on pages 43, 44, and 45 of said transcript; that the Pleasant Hill division of the Lexington, Chillicothe and Gulf R. R. Co. was incorporated under the general laws of Mo. on the 18th day of July, 1870, and its articles of association are as set out on pages 45, 46, 47, and 48 of the transcript aforesaid; that the said Lexington, Chillicothe and Gulf R. R. Co., and the Pleasant Hill division thereof, on the 4th day of October, 1870, filed their several acceptances of the provisions of the act of the General Assembly of the State of Mo., approved March 24th, 1870, authorizing the consolidation of railroads, said acceptances being filed in the office of the secretary of the State of Mo., as required by said act; that on the 4th day of October, 1870, under the

said act of the General Assembly of the State of Mo., approved March 24th, 1870, the said Lexington, Chillicothe and Gulf R. R. Co., and the said Pleasant Hill division thereof, filed their articles of consolidation in the office of the secretary of State, which are as set out in said transcript at pages 49, 50, 51, 52, 53, 54, 55, 56, and
10 57; that neither Mount Pleasant township, nor the individuals, stockholders, and directors living in said township, had any actual notice of the meeting of the stockholders, which was held for the purpose of such consolidation, and at that time no stock had been issued to Mount Pleasant township, and neither it nor such individual stockholders and directors participated in any manner in a meeting held for such purpose of consolidation; that on the 18th day of January, 1871, the bond set out in plaintiff's petition, and on which this action is based, together with 89 others of the same kind, was issued to the Lexington, Lake and Gulf R. R. Co., and said bond is as shown in said transcript at page 30; that the plaintiffs became the holders of all the bonds —— coupons in suit before maturity, and for value, without actual notice of the facts pleaded in defence to said bonds, or any notice of defects in the issue of said bonds, except such as they were bound by law to take notice of, and such as the face of the bonds imparted to them; that said Lexington, Lake and Gulf R. R. is graded throughout almost its whole length, but has never been completed; that the lines and routes of the L., C. and G. R. R., and the P. H. division thereof, and of the L., L. and G. R. R., are as indicated on the map as shown in said transcript at page 58; that on the 5th day of April, 1870, the county court of Bates Co., Mo., made an order for an election to take the sense of the voters of Mt. Pleasant township, as to whether said township should subscribe $90,000 to the capital stock of the Lexington, Chillicothe and Gulf R. R., which is to be found on pages 38, 39, and 40 of said transcript; that on the 4th day of May, 1870, such election was held pursuant to such order, and resulted in favor of the subscription, and thereupon, on the 14th day of June, 1870, said county court made an order, a copy of which appears in said transcript at page 40.

We hereby agree that all of the above orders and documents
11 appearing in the said transcript as aforesaid shall be read by either party to this action from said transcript; and we hereby waive a jury and security for costs in this court.

T. K. SKINKER,
Attorney for Plaintiff.
C. C. BASSETT,
Att'y for Def't.
GLOVER & SHEPLEY,
Att'y for Def't.

And afterwards, at said last-mentioned term of said circuit court, begun and held as aforesaid, the following further proceedings were had in said case on the 25th day of April, 1879, to wit:

VALENTINE WINTERS *et al.*
vs.
BATES COUNTY. } 1151.

By consent it is ordered that this cause be continued.

And afterwards, at a regular stated term of said circuit court, begun and held on the third Monday of November, 1879, at Jefferson City, in said district, the following further proceedings were had in said case on the 5th day of January, 1880, to wit:

VALENTINE WINTERS *et al.*
vs.
BATES COUNTY. } 1151.

Upon motion of T. K. Skinker, Esq., attorney for plaintiff, it is ordered that this case be coutinued for hearing until the first Monday of March next.

And afterwards, at said last-mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had in said case on the 1st day of March, 1880, to wit:

JONATHAN WINTERS *et al.*
vs.
BATES COUNTY. } 1151.

This day come the parties, by their attorneys, the plaintiffs by T. K. Skinker, Esq., and the defendant by C. C. Bassett, Esq., and this case being regularly called for trial, and a jury having been waived in writing, the same is heard by the court sitting as a jury, whereupon evidence is heard, cause argued by counsel and
12 submitted, and by the court taken under advisement.

And afterwards, at a regular stated term of said circuit court, begun and held on the third Monday of November, 1880, at Jefferson City, in said district, the following further proceedings were had in said case on the 15th day of March, 1881, to wit:

Stipulation and 2d Amen'd Pet. filed. Former Answer withdrawn and refiled. Case called for Hearing. Hearing and Submission. Special Finding of Facts filed. Judgment for Pl'ff. Order for Mandamus.

VALENTINE WINTERS *et al.*
vs.
BATES COUNTY. } 1151.

This day come the parties, by their attorneys, the plaintiffs by Thomas K. Skinker, Esq., and the defendant by C. C. Bassett and J. Ed. Belch, Esq'rs, thereupon in pursuance of a stipulation this day filed, and by consent plaintiffs file their second amended petition embracing new causes of action, and by leave of court defendant withdraws the amended answer heretofore filed and refiles the same as an answer to the said second amended petition. Thereupon the case being regularly called for trial, and an agreement having

been filed waiving a jury; the case was tried by the court sitting as a jury, and after argument of counsel for the respective parties was submitted on the pleadings, stipulations, and proofs; on consideration whereof the court finds the issues joined for the plaintiff, that defendant is indebted to plaintiff by reason of the non-payment of the bonds and coupons in said second amended petition described in the sum of ninety-five thousand six hundred and thirty-seven dollars and sixty-five cents ($95,637.65), and the court returns a special finding of facts as proved on the trial, which is ordered to be filed and made part of the record herein. It is therefore considered by the court that the plaintiffs, Valentine Winters and Jonathan H. Winters, recover against the defendant, Bates County, in the State of Missouri, the said sum of ninety-five thousand six hundred and thirty-seven dollars and sixty-five cents ($95,637.65), the amount so found to be due, together with their costs herein expended, to be enforced, if necessary, by mandamus against the county court of Bates
13 county, and the justices thereof, to compel them to levy and collect from the township of Mount Pleasant, in said county, for whose use the bonds and coupons herein sued on were issued, a tax for the payment thereof.

MEMO.—$28,459.15 bears 10 per cent. interest, and $66,178.50 bears interest at 6 per cent. per annum.

And said stipulation so filed as aforesaid is in the words and figures following, to wit:

Stipulation.

In the U. S. Circuit Court for the Eastern Division of the Western District of Mo.

VALENTINE WINTERS *et al.* vs. BATES COUNTY. } No. 1151.

It is agreed between the parties hereto that the plaintiff may file, as additional causes of action herein, coupons matured since January 1st, 1875, on bonds of the same issue as already sued on, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 49, 50, 51, 52, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67.

C. C. BASSETT, *Att'y for Def't.*

Butler, Mo., Feb. 23d, 1881.

And the 2d amended petition so filed as aforesaid is in the words and figures following, to wit:

2d Amended Petition.

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri:

In the Circuit Court.

VALENTINE WINTERS and JONATHAN H. WINTERS, Plaintiffs.
vs.
BATES COUNTY, Defendant.

Now come the plaintiffs, and by leave of court file this, their amended petition, and state that they are citizens of the State of Ohio; that defendant is a county of the State of Missouri, and that Mount Pleasant township is a township in said county; that heretofore, to wit, on the 5th day of April, 1870, twenty-five per-
14 sons, tax payers and residents of said township, did petition the county court of said county, setting forth their desire as a township to subscribe to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and to issue bonds in payment thereof; that thereupon said court ordered an election to be held in said township on the third day of May, 1870, to determine if such subscription should be made to said company; that said election was held as ordered, and two-thirds of the qualified voters of said township who voted thereat voted in favor of such subscription and of such issuing of bonds; that said company was at said several dates a corporation existing under and by virtue of the laws of the State of Missouri; that afterwards, to wit, on the 14th day of June, 1870, said subscription was made by said court to the capital stock of said company, and afterwards, to wit, on the 17th day of June, 1870, the same was accepted by said company; that afterwards, to wit, on the 4th day of October, 1870, said company was consolidated with a certain other company, incorporated on the 18th day of July, 1870, under and by virtue of the laws of said State, and known as the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, under the name of the Lexington, Lake and Gulf Railroad Company; that a properly certified copy of the articles of agreement evidencing such consolidation, and declaring the corporate name of the consolidated company to be the Lexington, Lake and Gulf Railroad Company, was on that day filed with the secretary of State; that the terms and conditions of said consolidation had first been ratified and approved by a majority in interest of all the stock held in each of said companies as required by law, and each of said companies had filed with the secretary of State its acceptance of the provisions of an act of the General Assembly of the State of Missouri, entitled "An act to amend chapter 63 of the
15 General Statutes 'of railroad companies' so as to authorize the construction, leasing and extension of railroads," approved March 24th, 1870; that the terms and conditions of said consolidation were such that said Lexington, Lake and Gulf Railroad Company became entitled to have, demand, sue for, recover, and receive the said subscription, and the bonds to be issued in payment thereof; that on the 18th day of January, 1871, said

county court did cause said bonds to be executed and issued, and did cause said subscription to be made and transferred to said Lexington, Lake and Gulf Railroad Company; that among the bonds thus executed and issued was a certain bond in words and figures, as follows, to wit:

No. 56. $1,000.

UNITED STATES OF AMERICA, *State of Missouri, County of Bates:*

Issued pursuant to articles of consolidation in payment of stock due the Lexington, Lake and Gulf Railroad Company consolidated October 4th, A. D. 1870.

Know all men by these presents, that the county of Bates, in the State of Missouri, acknowledges itself indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company in the sum of one thousand dollars, which sum the said county of Bates, for and in behalf of Mount Pleasant township therein, promises to pay the said Lexington, Lake, and Gulf Railroad Company, or bearer, at the Bank of America, in the city and State of New York, on the 18th day of January, A. D. 1886, together with interest thereon from the 18th day of January, A. D. 1871, at the rate of ten per cent. per annum, which interest shall be payable annually on the presentation and delivery, at said Bank of America, of the coupons hereto attached. This bond being issued under and pursuant to an order of the county court of Bates county, by virtue of an act of the General Assembly of the State of Missouri, approved March 23d, 1868, entitled "An act to facilitate the construction of
16 railroads in the State of Missouri," and authorized by a vote of the people taken May 3d, 1870, as required by law, upon the proposition to subscribe ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and which said railroad company last aforesaid and the former Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company were, on the 4th day of October, 1870, consolidated, as required by law, into one company, under the name of the Lexington, Lake and Gulf Railroad Company, and which said last-named railroad company, as provided by law, and under the terms of said consolidation thereof, possesses all the powers, rights, and privileges, and owns and controls all the assets, subscriptions, bonds, moneys, and properties whatever of the two said several companies, or either one of them.

In testimony whereof, the said county of Bates has executed this bond by the presiding justice of the county court of said county, under the order thereof, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court. This done at the city of Butler, county of Bates, this eighteenth day of January, A. D. 1871.

[SEAL.] B. H. THORNTON,
Presiding Justice of the County Court of Bates County, Mo.
W. J. SMITH,
Clerk of the County Court of Bates County, Mo.

Plaintiffs state that the remainder of said bonds are identical in tenor and effect with the foregoing, except that some of them mature at a different date; that all of said bonds were signed by one B. H. Thornton, then presiding justice of said county court, and were attested by one W. J. Smith, then clerk of said court, with the seal of said court affixed; that attached to said bonds were coupons for interest, one of which was in words and figures following:

$100. $100.

BUTLER, BATES COUNTY, MO., *January 18th*, 1871.

The county of Bates acknowledges to owe the sum of one
17 hundred dollars, payable to bearer on the 18th day of January, 1872, at the Bank of America, in the city and State of New York, for one year's interest on bond No. 56.

W. J. SMITH,
Clerk of the County Court, Bates County, Mo.

That the remainder of the said coupons are identical in tenor and effect with the foregoing, except that some of them mature at a different date, and represent the interest payable on a bond of a different number.

Plaintiffs say that they are, and at the date of maturity of the following described bonds and coupons, part of the foregoing issue, were, and now are, the owners and bearers of the same, viz., twenty-nine bonds, each for the sum of one thousand dollars, as aforesaid, all due January 18th, 1881, and numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30; also, five hundred and fifty coupons, each for the sum of one hundred dollars, as aforesaid, being interest, due at the several dates hereinafter named, on the bonds numbered as follows, to wit: nineteen coupons for interest due Jan'y 18th, 1872, on bonds numbered, respectively, 56, 57, 58, 59, 60, 61, 64, 65, 66, 67, 68, 69, 70, 75, 76, 77, 78, 79, 80; also, one coupon for interest due January 18th, 1873, on bond numbered 23; also, thirty-four coupons for interest due January 18th, 1874, on bonds numbered, respectively, 56, 57, 58, 59, 60, 61, 64, 65, 66, 68, 69, 70, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 39, 41, 42, 43, 23, 38; also, thirty-four coupons for interest due January 18th, 1875, on bonds numbered, respectively, 56, 57, 58, 59, 60, 61, 64, 65, 66, 68, 69, 70, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 89, 90, 39, 41, 42, 43, 23, 38; also, seventy-seven coupons for interest due January 18th, 1876, on bonds numbered, respectively, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 39, 41, 42, 43, 23, 38, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 49, 50, 51, 52, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80; also, seventy-seven coupons for interest due January 18th, 1877, on bonds numbered as last aforesaid; also, seventy-
seven coupons for interest due January 18th, 1878, on bonds
18 numbered as last aforesaid; also, seventy-seven coupons for interest due January 18th, 1879, on bonds numbered as last aforesaid; also, seventy-seven coupons for interest due January 18th,

1880, on bonds numbered as last aforesaid; also seventy-seven coupons for interest due January 18th, 1881, on bonds numbered as last aforesaid.

Plaintiffs state that no part of said bonds or coupons have been paid.

Wherefore they say that defendant is indebted to them in the sum of eighty-four thousand dollars; for which sum, with interest on the several bonds from the date of their maturity, at the rate of ten per cent., and interest on the several coupons from the respective dates of their maturity, at the rate of six per cent., and for the costs of this suit, plaintiffs pray judgment against the said defendant, to be levied of the said township.

T. K. SKINKER,
Att'y for Pl'ffs.

And said amended answer, so refiled, as aforesaid, is in the words and figures following, to wit:

Amended Answer.

In the Circuit Court of the United States for the Western District of Missouri.

VALENTINE WINTERS and JONATHAN WINTERS, Plaintiffs,
against
BATES COUNTY, Defendant.

Defendant, for amended answer to the amended petition filed by the plaintiffs, says:

That it is not true that on the 14th day of June, 1870, the subscription alluded to in the said petition was made by the county court of Bates county to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and that afterwards, on the 17th day of June, 1870, the same was accepted by the said company.

Defendant denies that any subscription whatever was ever made at any time by the county court of Bates county to the capital stock of the said Lexington, Chillicothe and Gulf Railroad Com-
19 pany, or accepted by the said company; but states the fact to be, that long after the said alleged and pretended consolidation of the Lexington, Chillicothe and Gulf Railroad Company with the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, as stated in the said petition, to wit, on the 18th day of January, 1871, the said Bates county court caused the said subscription, so voted by the inhabitants of Mount Pleasant township to the Lexington, Chillicothe and Gulf Railroad Company, to be made to the capital stock of the said consolidated railroad company, and the same was then and there accepted by the said company, and the bonds here sued on and the coupons attached thereto were then and there issued to the said alleged consolidated railroad company.

And the defendant says that the said county court had no lawful power or authority whatever to make such subscription or to issue

said bonds, and the same were issued and delivered without authority of law, and are now void, in the hands of the plaintiff as against the defendant.

Defendant denies that on the 4th day of October, 1870, the said Lexington, Chillicothe and Gulf Railroad Company was legally consolidated with the said Pleasant Hill division thereof, and states the fact to be that no meeting of the stockholders of the said Lexington, Chillicothe and Gulf Railroad Company was ever regularly called, for the purpose of making such consolidation, as required by law, nor was any notice given to the stockholders of said company, or the directory thereof, residing in Bates county or Mount Pleasant township, of any such meeting, as required by law, nor did any of the said stockholders or directory appear or participate in any such meeting, nor was the stock so voted by the inhabitants of Mount Pleasant township in any manner represented in any such meeting.

Defendant denies that the terms and conditions of the said
20 pretended consolidation were such that the said Lexington, Lake and Gulf Railroad Company became entitled to have, demand, sue for, recover, and receive the said subscription, and the bonds to be issued in pursuance thereof.

Defendant says that any such consolidation was illegal and void in law, because the result of the said consolidation would be to deprive the public of the benefit of competition between the said roads, contrary to the statute in such case made and provided.

Defendant admits that on the 18th day of January, 1871, the county court of Bates county did cause said bonds to be executed and issued, and did cause said subscription to be made to said Lexington, Lake and Gulf Railroad Company, and among the bonds thus executed and issued was a certain bond, as described in the said petition.

But the defendant denies that any transfer of said subscription was made by the said Bates county court, for the reason that no such subscription had ever been made by the said court prior to the said 18th day of January, 1871; nor had any certificate of stock at any time prior thereto been issued, tendered, or delivered to the said court in behalf of said township.

And the said defendant denies that the said county court, although such subscription may have been made to the said Lexington, Chillicothe and Gulf Railroad Company, as alleged by the plaintiffs, had no legal power or authority to transfer said subscription to the said Lexington, Lake and Gulf Railroad Company, and that the action of said court would have been null and void.

Defendant, admits that the coupon sued on was attached to said bond, as stated in the said petition.

But the defendant denies the plaintiffs are entitled to recover in this action, for the reasons and denials heretofore in this answer suggested: Because the said bonds were by the inhabitants of Mount Pleasant township voted to one company, and the said county court,
without authority of law or any lawful power whatever, issued
21 and delivered them to another, and because the alleged con-

solidation, as made or set up in the said petition, was irregularly and illegally made, and is void in law.

Defendant having fully answered, asks to be discharged with costs.

A. M. LAY AND
C. C. BASSETT,
Att'ys for Def't.

And the special finding of facts so filed as aforesaid is in the words and figures following, to wit:

Special Finding of Facts.

In the Circuit Court of the United States for the Western District of Missouri, Eastern Division.

JONATHAN WINTERS *et al. vs.* BATES COUNTY.

Now, on the 15th day of March, 1881, is come the parties, by their attorneys, the plaintiffs by Thomas K. Skinker, Esq., and def't by C. C. Bassett and J. Ed. Belch, Esq's., and having waived a jury, submit this cause to the court for trial, and upon such submission the court finds the following facts and special verdict:

1st. On the 5th day of April, 1870, there was filed in the county court of Bates Co. the following petition, signed by 111 citizens and taxpayers of Mt. Pleasant township in said county:

Petition to Co. Court to Subscribe to Stock of L. C. & G. R. R. Co.

To the honorable the county court of Bates county, Missouri:

The undersigned, your petitioners, citizens of Mount Pleasant township, in said county, being desirous of subscribing stock to the Lexington, Chillicothe and Gulf Railroad Company as a township, do hereby petition and pray your honorable body to order an election in said township of Mount Pleasant, to be held on Tuesday, the 3d day of May, A. D. 1870, for the purpose of ascertaining the sense of the people of said township as to whether they will or will not subscribe to the ninety thousand dollars to the Lexington, Chillicothe and Gulf Railroad Company, and in case such bonds shall be voted as herein contemplated, do all other things nec-
22 essary to the issue and delivery of said bonds in accordance with the law made and the conditions hereinafter mentioned Said bonds to be made payable at the Bank of America in the city and State of New York, one-third of said bonds to be made payable ten years after date thereof, one-third fifteen years, and the remaining one-third twenty years after the date thereof; said bonds shall bear interest at the rate of ten per cent. per annum and payable annually, and date from day of delivery.

The county court shall appoint a suitable and competent person as commissioner, who shall be a citizen of Bates county, and shall require said commissioner to enter into a good and sufficient bond to the county of Bates, to be approved by the county court, for the faithful performance of his duty as hereinafter provided.

The commissioner provided for in the preceding section shall receive said bonds into his custody, and dispose of the same as hereinafter provided.

Said commissioner shall be authorized and duly empowered to sell and dispose of said bonds to the best of his ability; provided, however, that he shall be held to receive and account for said bonds, and shall receive a reasonable compensation therefor out of the same, to be determined by the court. Said commissioner shall deliver and pay to the Lexington, Chillicothe and Gulf Railroad Company, or their agent, ninety per cent. of the total amount of each monthly estimate of work done in Mt. Pleasant township made by the the engineer of said company, as hereinafter provided for work done on said road-bed, and take a receipt from said company, or their agent, for the same, which said receipt shall be a voucher to the county court, and upon the presentation of said receipt to the county court, the said court shall take up said receipt and give said commissioner a credit for the amount so receipted for, and the acknowledgment of said receipt by said court shall thenceforward discharge said commissioner from further liability
23 on his bond for the amount so receipted, and, in like manner, to pay and receipt until the whole amount of bonds or money which said commissioner shall be charged with shall have been thus expended, except the remaining ten per cent., which has been withheld on each monthly estimate or payment as a fiduciary fund, which said ten per cent. of the whole amount thus receipted for, from time to time, as hereinafter directed, shall, at the time, and together with the last payment, be paid to said company, or their agent.

In case said bonds are elected by said township as provided for by law, and when the Lexington, Chillicothe and Gulf Railroad Company shall have finally located and put all their road under contract, south of the city of Lexington to the north line of Mt. Pleasant township, as it now exists in Bates county, then the county court of Bates county shall make or cause to be made her bonds for the amount herein provided, and deliver the same into the hands of said commissioner.

The engineer of said company shall, six days previous to the end of each month, make out an itemized estimate of the amount of work done in Mt. Pleasant township, on which said company expect to make their next demand for money, in which estimate he shall set out the amount and kind or class of work, whether it be of earth or masonry, and the price thereof under his oath and official signature.

The conditions made on the part of the Lexington, Chillicothe and Gulf Railroad Company are such that if the said railroad company shall locate said railroad into and through Mt. Pleasant township to the town of Butler, in Bates county, and commence and complete a road on the line of said location to the town of Butler as aforesaid, within two years after the delivery of said bonds, and locate and continue a depot within one-third of a mile of the court-house in Butler, and commence the building of that portion

of the road lying within Mount Pleasant township, at the
24 point where the depot is to be located, and build and complete said road-bed from that point to the north line of said township. Then, and as said work is in state of progression, said bonds, or their equivalent, shall be delivered to the said company as hereinbefore provided.

(Here follow names of subscribers.)

2d. On the 5th day of April, 1870, the said county court made an order for an election to take the sense of the qualified voters of Mt. Pleasant township, in said county, as to whether said township should subscribe $90,000 to the capital stock of the Lexington, Chillicothe and Gulf R. R. Co., which order was as follows, to wit:

Order for Election.

Ordered by the court that a special election be held in Mount Pleasant township, in the county of Bates, and State of Missouri, on the 3d day of May, 1870, for the purpose of ascertaining the sense of the people of said township, as to whether they will or will not subscribe ninety thousand dollars to the Lexington, Chillicothe and Gulf Railroad Company, in accordance with the petition of 111 citizens of said township filed herein, and on the terms as therein specified, which are as follows, to wit:

In case such bonds or subscription is voted as herein contemplated, the said bonds to be made payable at the Bank of America, in the city and State of New York, one-third of said bonds to be made payable ten years after date thereof, one-third fifteen years, and the remaining one-third twenty years after the date thereof. Said bonds shall bear interest at the rate of ten per cent. per annum, and payable annually, and to date from the day of delivery.

The county court shall appoint a suitable and competent
25 person as commissioner, who shall be a citizen of Bates county, and shall require said commissioner to enter into a good and sufficient bond to the county of Bates, to be approved by the county court for the faithful performance of his duty, as hereinafter provided.

The commissioner provided for in the preceding section shall receive said bonds into his custody and dispose of the same, as hereinafter provided; said commissioner shall be authorized and duly empowered to sell and dispose of said bonds to the best of his ability provided, however, that he shall be held to receive and account for said bonds, and shall receive a reasonable compensation therefor out of the same, to be determined by the court.

Said commissioner shall deliver and pay to the Lexington, Chillicothe and Gulf Railroad Company, or their agent, ninety per cent. of the total amount of each monthly estimate of work done in Mount Pleasant township, made by the engineer of said company, as hereinafter provided, for work done on said road-bed, and take a receipt from said company or their agent for the same, which said receipt shall be a voucher to the county court; and upon the presentation of said receipt to the county court, the said court shall take up said receipt and give said commissioner a credit for the amount so re-

ceipted for, and the acknowledgment of said receipt by said court shall thenceforward discharge said commissioner from further liability on his bond for the amount so receipted; and in like manner to pay and receipt until the whole amount of bonds or money which said commissioner shall be charged with shall have been thus expended, except the remaining ten per cent., which has been withheld on each monthly estimate or payment as a fiduciary fund, which said ten per cent. of the whole amount thus receipted for from time to time, as hereinbefore directed, shall, at the time
26 and with the last payment, be paid to said company or their agent.

In case said bonds are elected by said township, as provided for by law, and when the Lexington, Chillicothe and Gulf Railroad Company shall have fully located and put all their road under contract south of the city of Lexington to the north line of Mount Pleasant township, as it now exists, in Bates county, then the county court of Bates county shall make or cause to be made her bonds for the amount herein provided, and deliver the same into the hands of said commissioner.

The engineer of said company shall, six days previous to the end of each month, make out an itemized estimate of the amount of work done in Mount Pleasant township, on which the company expect to make their next demand for money, in which estimate he shall set out the amount and kind and class of work, whether it be of earth or masonry, and the price thereof, under his oath and official signature.

The conditions made on the part of the Lexington, Chillicothe and Gulf Railroad Company are such, that if the said railroad company shall locate said railroad into and through Mount Pleasant township to the town of Butler, in Bates county, and commence and complete a road on the line of said location to the town of Butler, as aforesaid, within two years after the delivery of said bonds, and locate and continue a depot within one-third of a mile of the court-house in Butler, and commence the building of that portion of the road lying within Mount Pleasant township at the point where the depot is to be located, and build and complete said road-bed from that point to the north line of said township, then, and as said work is in state of progression, said bonds, or their equivalent, shall be delivered to said company, as herein provided.

It is further ordered by the court that a special election be
27 held in Grand River township, in the county of Bates, and State of Missouri, on the 4th day of May, 1870, for the purpose of ascertaining the sense of the people of said township as to whether they will or will not subscribe forty thousand dollars to the Lexington, Chillicothe and Gulf Railroad Company, in accordance with petition of citizens filed here in court, and on the same conditions set forth in the above and foregoing order and petition.

3d. On the 4th day of May, 1870, such election was held, pursuant to such order, and resulted in favor of the subscription; and thereupon on the 14th day of June, 1870, said county court made the following order, to wit:

Order of Co. Court to Subscribe to Capital Stock of L., C. and G. R. R. Co.

Now, at this day, is filed in open court the certificate of the clerk of this court, showing that on the 3d day of May, 1870, an election of the qualified voters of Bates county, State of Missouri, was held to obtain the assent of said voters to subscribe the sum of ninety thousand ($90,000) dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, in pursuance of an order of this court submitting a proposition to subscribe said sum, which order was made on the 5th day of April, 1870; and the court being satisfied that two-thirds of the qualified voters of said township who voted at said election did vote in favor of said subscription, and have given their assent thereto. It is therefore ordered by the court that the sum of ninety thousand ($90,000) dollars be, and the same is hereby, subscribed as stock to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, in the name and behalf of Mount Pleasant township, in said county, subject to, and in pursuance of all the terms, restrictions, and limitations of the petition of taxpayers and residents of said township heretofore filed, and the order of this court thereunder so made as aforesaid, on said 5th day of April, 1870, and that the agent of this court to represent the interest of this county in said railroad company
28 be, and he is hereby, authorized and directed to make said subscription on the stock-books of said company, and in making said subscription he is ordered to have copied in full the orders made by this court on said 5th day of April, 1870, as the conditions on which the same is made; and that he report to this court his acts in the premises aforesaid.

STATE OF MISSOURI, } ss:
County of Bates, }

I, W. J. Smith, clerk of the county court in and for said county, hereby certify that the above is a true copy of the original order of said court as the same —— of record now in my office.

Witness my hand as clerk, and the seal of said court, done at office in Butler, this 19th day of March, 1873.

[SEAL] W. J. SMITH, *Clerk.*

4th. Under said order A. L. Betz, the commissioner therein appointed to subscribe to the capital stock of the Lexington, Chillicothe and Gulf R. R. Co., on the 14th day of June, 1870, went to Lexington, Mo., for that purpose. He carried with him a copy of the records of said county court for the purpose of showing his authority to act in the premises. The company then had no stock-books on which the subscription could be made, by reason whereof the said Betz did not make the subscription. Thereupon the said Betz sought to withdraw or reclaim the papers he had taken with him, but said company refused to allow him to do so. On the 17th day of June, and the 25th day of August, 1870, the following entries were made on the book of minutes of the proceedings of the board of directors of the Lexington, Chillicothe and Gulf R. R. Co.;

Proceedings of Board of Directors L., C. and G. R. R. Co. June 17th, 1870.

LEXINGTON, MO., FRIDAY, *June 17th*, 1870.

Pursuant to adjournment the board of directors of the Lexington, Chillicothe and Gulf Railroad Company met this day.

Present: Col. Jno. Reid, president and director; I. Nichols, vice-president and director; J. F. Atkinson, director; T. Davis, att'y and director; G. W. Baker, Benj. Marshall, C. L. Ewing, H. H. Moore, B. A. Craine, M. Pickett, directors; M. L. DeMott, auditor; F. J. Tygard, secretary.

On motion, minutes of preceding meetings were ordered not to be read.

On motion, the following resolution was unanimously adopted:

Be it resolved by the board of directors of the Lexington, Chillicothe and Gulf Railroad Company, that A. L. Betz, together with such other persons as he may designate or associate with him, be authorized to obtain subscriptions from counties, towns, or townships along the line of the said railroad to the capital stock thereof, and to discharge said duty, by authority of said company, until further ordered by the board, but without expense to the said company.

Now comes A. L. Betz, of Bates county, Missouri, and presents to this board for acceptance the following:

STATE OF MISSOURI, } ss:
County of Bates, }

Be it remembered that at the February adjourned term of the county court within and for the county of Bates, and State of Missouri, begun and held at the court-house in the town of Butler, on the first Monday of April, A. D. 1870, it being the fourth day of said month, were present B. H. Thornton, Lyman E. Hall, and John A. Crigle, gentleman, justices; John D. Myers, clerk, and W. L. Smith, sheriff, officers and members of said court, and being in session, and having adjourned from day to day, were had, among other things, the following proceedings, to wit:

APRIL THE 5TH, 1870.

Ordered by the court that a special election be held in Mt. Pleasant township, in the county of Bates, State of Missouri, on the 3d of May, 1870, for the purpose of ascertaining the sense of the people of said township as to whether they will or will not subscribe ninety thousand dollars to the Lexington, Chillicothe and Gulf Railroad Company in accordance with the petition of 111 citizens of said township filed herein, and on the terms as therein specified, which are as follows, to wit:

In case such bonds or subscription is voted, as herein contemplated, said bonds to be made payable at the bank of America, in the city and State of New York. One-third of said bonds to be made payable in ten years after date thereof, one-third fifteen years, and the remaining one-third twenty years after the date thereof; said

bonds shall be on interest at the rate of ten per cent. per annum, and payable annually, and to date from the day of delivery; the county court shall appoint a suitable and competent person as commissioner, who shall be a citizen of Bates county, and shall require said commissioner to enter into a good and sufficient bond, to be approved by the county court, as hereinafter provided.

The commissioner provided for in the preceding section shall receive said bonds into his custody and dispose of the same as hereinafter provided.

Said commissioner shall be authorized and duly empowered to sell and dispose of said bonds to the best of his ability; provided, however, that he shall be held to receive and account for said bonds, and shall receive a reasonable compensation therefor out of the same, to be determined by the court. Said commissioner
31 shall deliver and pay to the Lexington, Chillicothe and Gulf Railroad Company, or their agent, ninety per cent. of the total amount of each monthly estimate of work done in Mt. Pleasant township, made by the engineer of said company, as hereinafter provided, for work done on said road-bed, and take a receipt from said company, or agent, for the same, which said receipt shall be a voucher to the county court.

The said court shall take up said receipt and give such commissioner a credit for the amount so receipted for, and the acknowledgment of said receipt by said court shall thenceforward discharge said commissioner from further liability on his bond for the amount so receipted, and in like manner to pay and receipt until the whole amount of bonds or money which said commissioner shall be charged with shall have been thus expended, except the remaining ten per cent., which has been withheld on each monthly estimate or payment as a fiduciary fund, which said ten per cent. of the whole amount, thus receipted for from time to time, as hereinbefore directed, shall, at the time and with the last payment, be paid to said company or their agent.

In case said bonds are elected by said township, as provided for by the law, and when the Lexington, Chillicothe and Gulf R. R. Company shall have fully located and put all their road under contract south of the city of Lexington to the north line of Mt. Pleasant township, as it now exists in Bates county, then the county court of Bates county shall make, or cause to be made, her bonds for the amount herein provided, and deliver the same into the hands of said commissioner.

The engineer of said company shall, six days previous to the end of each month, make out an itemized estimate of the amount of work done in Mt. Pleasant township, on which the company
32 expect to make their next demands for money, in which estimate he shall set out the amount and kind and class of work, whether it be of earth or masonry, and price thereof, under his official oath and signature.

The conditions on the part of the Lexington, Chillicothe and Gulf Railroad Company are such that if the said railroad company shall locate said railroad into and through Mt. Pleasant township, to

the town of Butler, in Bates county, and commence and complete a road on the line of said location to the town of Butler, as aforesaid, within two years after the delivery of said bonds, and locate and continue the depot within one-third of a mile of the court-house in Butler, and commence the building of that portion of the road lying within Mt. Pleasant township, at the point where the depot is to be located, and build and complete said road-bed from that point to the north line of said township, then and as said work is in state of progression, said bonds, or their equivalent, shall be delivered to said company, as hereinbefore provided.

It is further ordered by the court that a special election be held in Grand River township, in the county of Bates and State of Missouri, on the 4th day of May, 1870, for the purpose of ascertaining the sense of the people of said township as to whether they will or will not subscribe forty thousand ($40,000) —— to the Lexington, Chillicothe and Gulf Railroad Company, in accordance with the petition of —— citizens, filed here in court, and on the same conditions as set forth in the above and foregoing petition and order.

STATE OF MISSOURI, }
County of Bates, } ss:

I, John D. Myres, clerk of the county court, within and for the county and State aforesaid, do hereby certify that the above and aforegoing is a full, true, and correct order of the Bates county court, as fully as the same appears —— record now in my office.

Witness my hand and the seal of said court, affixed at
33 office in Butler, June 15, 1870.

[SEAL.] (Signed) JOHN D. MYRES, *Clerk*.

In the Matter of the Lexington, Chillicothe and Gulf Railroad Company.

It is hereby ordered by the court that A. L. Betz be, and he is hereby, appointed agent of this court to represent the interest of Bates county in subscribing the bonds voted to the Lexington, Chillicothe and Gulf Railroad Company, of the townships of Mount Pleasant and Grand River, in said Bates county, Missouri, at election held in said township, as follows, to wit, in Mt. Pleasant township, on the third (3d) day of May, 1870, in Grand River township, on the 4th day of May, 1870, by the qualified voters of said townships aforesaid; and the said A. L. Betz, in subscribing the stock by said townships so voted as aforesaid upon the stock-books of said railroad company, is ordered and directed to do the same by, under, and through the orders of this court heretofore made for that purpose, and in strict conformity therewith.

STATE OF MISSOURI, }
County of Bates, } ss:

I, John D. Myres, clerk of the county court within and for Bates county, Missouri, do hereby certify that the above and within is a true, correct, and perfect —— —— order of the Bates county court,

made at the May adjourned term, on the 14th day of June, 1870, as fully as the same appears of record now in my office.

Witness my hand and the seal of said court affixed, at office, this 15th day of June, A. D. 1870.

[SEAL.] (Signed) JOHN D. MYRES, *Clerk.*

In the Matter of Lexington, Chillicothe and Gulf R. R. Co.

Now at this day is filed in open court the certificate of the clerk of this court, showing that, on the 3d day of May, 1870, an
34 election of the qualified voters of Mt. Pleasant township, in Bates county, State of Missouri, was held to obtain the assent of said voters to subscribe the sum of ninety thousand dollars ($90,000) to the capital stock of the Lexington, Chillicothe and Gulf R. R. Co., in pursuance of an order of this court, submitting a proposition to subscribe said sum, which order was made on the 5th day of April; and the court being satisfied that two-thirds of the qualified voters of said township who voted at said election did vote in favor of said subscription and have given their assent thereto, it is therefore ordered by the court that the sum of ninety thousand dollars ($90,000) be, and the same is hereby, subscribed as stock to the capital stock of the Lexington, Chillicothe and Gulf R. R. Company in the name and in behalf of said Mt. Pleasant township, in said county, subject to and in pursuance of all all the terms, restrictions, conditions, and limitations of the petition of taxpayers and residents of said township, heretofore filed, and the order of this court thereunder, so made, as aforesaid, on said 5th day of April, 1870, and that A. L. Betz, the agent of this court to represent the interests of this county in said R. R. company, be, and is hereby, authorized and directed to make said subscription on the stock-books of said company, and in making said subscription, he is ordered to have copied in full the orders made by this court on the 5th day of April, 1870, as the conditions on which the same is made, and that he report to this court his acts in the premises aforesaid.

STATE OF MISSOURI, *County of Bates:*

I, John D. Myres, clerk of the county court within and for the county of Bates and State of Missouri, do certify that the above and foregoing is a full, true, and perfect copy of the order of this Bates county court, made at the ——— term, 1870, as fully as the
35 same appears of record now in my office.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 14th day of June, 1870.

[SEAL.] (Signed) JOHN D. MYRES, *Clerk.*

In the Matter of the Lexington, Chillicothe and Gulf R. R. Company.

Now, at this day, is filed in open court the certificate of the clerk of this court, showing that on the 4th day of May, 1870, an election of the qualified voters of Grand River township, in Bates county, State of Missouri, was held, to obtain the assent of said voters to subscribe the sum of forty thousand dollars ($40,000) to the capital

stock of the Lexington, Chillicothe and Gulf R. R. Company, in pursuance of an order of this court submitting a proposition to subscribe said sum, which order was made on the 5th day of April, 1870, and the court being satisfied that two-thirds of the qualified voters of said township who voted at said election did vote in favor of said subscription, and have given their assent thereto.

It is therefore ordered by the court that the sum of forty thousand dollars ($40,000) be, and the same is hereby, subscribed as stock to the capital stock of the Lexington, Chillicothe and Gulf R. R. Company, in the name and in behalf of said county, subject to and in pursuance of all the terms, restrictions, conditions, and limitations of the petition of the taxpayers and residents of said township heretofore filed, and the order of this court thereunder, so made as aforesaid, on said 5th day of April, 1870; and that A. L. Betz, the agent of this court, to represent the interests of this county in said R. R. company, be, and is hereby, authorized and directed to make said subscription on the stock-books of said company, and in making said subscription he is ordered to have copied in full the orders made by this court on said 5th day of April, 1870, as the conditions on which the same is made, and that he report to this court his acts in the premises aforesaid.

36 STATE OF MISSOURI, } ss:
County of Bates, }

I, John D. Myres, clerk of the county court within and for the county of Bates, and State of Missouri, do certify that the above and foregoing is a full, true, and perfect copy of the order of the Bates county court, made at the —— term, 1870, as fully as the same appears of record, now in my office.

In testimony thereof, I have hereunto set my hand and affixed my seal, this 14th day of June, 1870.

[SEAL.] (Signed) JOHN D. MYRES, *Clerk.*

The orders of the Bates county court, after being read, were ordered by the board to be spread upon the record books of this company, and on motion, the subscriptions made and specified in the aforesaid orders to the capital stock of the Lexington, Chillicothe and Gulf R. R. Company, were accepted by the board of directors of said company. Being no further business —— the board, they adjourned, to meet subject to the call of the president.

JOHN REID, *Pres.*
F. J. TYGARD, *Sec't'y.*

BUTLER, MO., *Aug. 25th*, 1870.

Pursuant to call of Pres't Reid, the board of directors of the Lex., Chillicothe and Gulf R. R. Company met this day at Butler.

Present: Jno. Reid, president and director; T. Davis, att'y and director; Jno. F. Atkinson, G. D. Satterfield, C. L. Ewing, G. W. Baker, and Benj. Marshall, directors; Isaih Nichols, vice-
37 president and director; H. H. Moore, B. A. Craine, H. V. Stall, And. Ritchey, and M. J. Picket, directors; F. J. Tygart,

sec't'y; A. L. Betz, comm'r Bates county; A. K. Owen, treas., and Jno. Atkinson, supt.

The minutes of preceding meeting were read and approved.

On motion, the president is requested to appoint a committee of three to superintend the work now in progress in Lafayette county. Said committee shall perform and do the work or business which would devolve upon the board. They shall keep a record of their transactions, which shall be submitted to the board at their next meeting.

Ordered, that the pres't be one of, and act as chairman to, said committee.

The president appointed Messrs. J. T. Atkinson and G. W. Baker as such committee.

Adjournment, subject to call of president.

JNO. REID, *Pres.*
F. J. TYGARD, *Sec't'y.*

5th. After the 17th of June, said Betz again went to Lexington to make such subscription, but after he got there and saw the condition of the board he did not make the subscription, and made report to the said county court of his acts and doings on the 19th day of December, 1870, as follows, to wit:

Report of A. L. Betz, Comm'r.

In the County Court of Bates, October 2d, Adjourned Term.

Now at this day comes A. L. Betz, as commissioner of said court to subscribe bonds to the capital stock of Lexington, Chillicothe and Gulf Railroad Company, and, reporting, says:

That, three days after his appointment as such commissioner, he proceeded to the city of Lexington, and there found the board of directors in open session, and fully identified himself as
38 such commissioner by the presentation to said board of directors proper certificates, attested by your clerk under his official seal.

That your said commissioner advised said board of his intention to subscribe bonds to the amount of one hundred and thirty thousand dollars for Bates county, in behalf of Mount Pleasant and Grand River townships, and was informed by said board of directors that they did not then have a suitable book for that purpose. Whereupon your commissioner placed all the necessary papers in the hands of the secretary of said company, that he might spread them on the books, so that your commissioner might, on another occasion, more quickly do the matter.

On or about the first of August following your commissioner again went to the city of Lexington for the purpose of subscribing said bonds; but, on coming before the said board, he found them quarreling among themselves, and in a bad condition generally; and, further, that they had so shaped the said board, and, as your commissioner believed, unlawfully, that Bates county was left without a guarding element in the said board of directors; and your com-

missioner was of opinion that, in justice to the citizens of said township and to your honorable body, he should not make such subscription then, and he did not.

Soon after this your commissioner was informed that the said company had, as they claimed, merged themselves into another company, and your commissioner could not therefore make such subscription without further instruction from your honorable body.

The bonds of said township are therefore not subscribed.

All of which is most respectfully submitted, this 19th day of December, 1870.

A. L. BETZ, *Com'r.*

6th. No subscription of stock was, in fact, made and signed by said commissioner on the books of the company, and no
39 certificate of stock was, in fact, issued to said township prior to the consolidation, which was made between the Lexington, Chillicothe and Gulf R. R. Co. and the Pleasant Hill division of the Lexington, Chillicothe and Gulf R. R. Co., on the 4th day of October, 1870.

7th. On the 19th day of December, 1870, said county court made the following order, viz:

Order Co. Ct. Approving Report of A. L. Betz and App't'g J. M. Boreing Comm'r.

Now, at this day, comes A. L. Betz, commissioner, heretofore appointed by this court to subscribe stock to the Lexington, Chillicothe and Gulf Railroad Company, and as such presents his report, which is approved.

And said court having adjourned from day to day until the 22d day of December, 1870, the following other and further proceedings were had, to wit:

Ordered, that James M. Boreing be, and he is hereby, appointed as commissioner for the sale of the bonds subscribed by Bates county to the Lexington, Chillicothe and Gulf Railroad Company on his entering into bond for $180,000.

8th. On the 18th day of January, ——, said county court made the following order, viz:

Order of Subscription.

Ordered by the court, that the bonds of Mount Pleasant in the matter of issuing said bonds to the Lexington, Lake and Gulf R. R. Co., whereas heretofore, to wit, May 3d, 1870, a proposition was submitted to the qualified voters of Mount Pleasant township, Bates county, in the State of Missouri, as required by law, to vote and subscribe the sum of ninety thousand dollars in bonds in the name of said county, in behalf of said township, to the capital stock of the former Lexington, Chillicothe and Gulf Railroad Company, and which said amount of bonds was voted by the people, and subscribed to the capital stock of said railroad company, as required by law;

And whereas, on the 4th day of October, A. D. 1870, said Lexington, Chillicothe and Gulf Railroad Company, and the former
40 Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company were consolidated and merged into one company, under the name and style of the Lexington, Lake and Gulf Railroad Company, as provided by law;

And whereas, by authority of the provisions of law, and under and pursuant to the terms and conditions of said consolidation, said Lexington, Chillicothe and Gulf Railroad Company, and said Pleasant Hill division of said company, have ceased to exist by name, and said Lexington, Lake and Gulf Railroad Company was formed by said consolidation, and possessing all the powers, rights, franchises, privileges, and immunities, and owning and controlling all the assets, subscriptions, bonds, moneys, and properties whatever of the said two several railroad companies forming said consolidated company, or either one of them, together with the power, right, and authority in law and equity given said Lexington, Lake and Gulf Railroad Company to have, demand, and sue for and recover, receive and receipt for all and every the assets, bonds, and subscriptions made to the capital stock of said two companies making said consolidation, and specially said bonds of said Mount Pleasant township, and as fully and to all intents and purposes as said Lexington, Chillicothe and Gulf Railroad Company might or could have done had said consolidation never have been formed and entered into as aforesaid:

Now, therefore, be it hereby ordered by the county court of Bates county that said sum of ninety thousand dollars in bonds, being ninety bonds of one thousand dollars each, be issued in the name of said Bates county, for and in behalf of said township of Mount Pleasant, payable to said Lexington, Lake and Gulf Railroad Company, or bearer, in payment and satisfaction of said original subscription as aforesaid.

And be it further ordered, that said bonds be issued as aforesaid, and signed by the presiding justice of this court, and attested by the clerk thereof, and that the seal of this court be affixed to
41 said bonds; and also that the coupons attached to said bonds be signed by said clerk of this county, all of said bonds to be dated as of this day, and of which said bonds thirty shall be due in ten years from date, thirty in fifteen years from date, and the remaining thirty in twenty years from date, each for one thousand dollars, payable at the Bank of America, in the city and State of New York, with coupons for interest attached, at the rate of ten per cent. per annum.

And further ordered that said bonds be delivered to James M. Boreing, commissioner, and the proceeds thereof by him paid over to said Lexington, Lake and Gulf Railroad Company, or their agents, according to the terms and conditions of said subscription herein referred to, and said bonds numbering from one to ninety, inclusive, said James M. Boreing is hereby authorized to subscribe said stock to said railroad company.

9th. James M. Boreing, the commissioner so appointed, on the 18th day of January, 1871, made said subscription on the books of

the Lexington, Lake and Gulf R. R. Co., and a certificate of stock then for the first time issued.

This subscription is in the following words:

Subscription of Stock to L., L. and G. R. R. Co.

In the Matter of Subscription of Stock to L., L. and G. R. R. Co.

I, James M. Boreing, commissioner, duly and lawfully authorized as such by the county court of Bates county, Mo., to act for and in behalf of said county in the matter of subscribing certain bonds for said county to the Lexington, Lake and Gulf R. R. Co. in behalf of Mt. Pleasant township therein, do hereby, in pursuance of the authority vested in me, subscribe as so much stock in said railroad company the sum of ninety thousand dollars, payable in bonds of one thousand dollars each, to said railroad company, according to all the terms and conditions specifically set forth upon the record of said Bates county court, at its April term, 1870, on pages 406, 407, and 408, and at its June term, 1870, on page 434, and at
42 its November adjourned term, 1870, on pages 50 and 51, hereby claiming all the rights, privileges, and immunities for said county of Bates for and in behalf of said township as a stockholder of nine hundred (900) shares in said railroad company, that justly and truly belonged to her by virtue of the foregoing subscription—Bates county, Missouri, for and in behalf of Mt. Pleasant township, in said county.

JAS. M. BOREING, *Commissioner.*

10th. The Lexington, Chillicothe and Gulf R. R. Co. was duly incorporated under the general railroad law of Missouri on the 25th day of August, 1869.

11th. The Pleasant Hill Division of the Lexington, Chillicothe and Gulf R. R. Co. was duly incorporated under the general railroad law of Missouri on the 18th day of July, 1870.

12th. The said Lexington, Chillicothe and Gulf R. R. Co., and the Pleasant Hill Division of the Lexington, Chillicothe and Gulf R. R. Co., on the 4th day of October, 1870, filed in the office of the secretary of State their several acceptances of the provisions of the act of the General Assembly of the State of Missouri, approved March 24th, 1870, authorizing the consolidation of railroads.

13th. On the 4th day of October, 1870, under the said last-mentioned act, the said Lexington, Chillicothe and Gulf R. R. Co., and the Pleasant Hill Division of the Lexington, Chillicothe and Gulf R. R. Co., filed articles of consolidation in the office of the secretary of State.

OFFICE OF SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Eugene F. Weigel, secretary of State of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of consolidation of the Lexington, Chillicothe and Gulf Railroad Company and the Pleasant Hill Division

of the Lexington, Chillicothe and Gulf Railroad Company, under the name and style of the Lexington, Lake and Gulf Railroad Company, filed October 4th, 1870, as appears by comparing the same with the original of said articles now on file as the law di-
43 rects in this office.

In testimony whereof, I have hereunto set my hand and affixed my official seal. Done at office this 30th day of April, A. D. eighteen hundred and seventy-two.

[SEAL.] EUGENE F. WEIGEL,
Secretary of State.
By CHAS. SCHAEKEL,
Chief Clerk.

Articles of Consolidation of L., C. and G., and P. H. Div., of L., C. and G. R. R. Co.

Articles of consolidation of the Lexington, Chillicothe and Gulf Railroad Company, and the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company.

To all whom it may concern:

Whereas heretofore articles of association were signed and entered into, and the Lexington, Chillicothe and Gulf Railroad Company duly incorporated thereunder, according to the laws of the State of Missouri, on the 25th day of August, A. D. 1869, and which said articles of association and act of incorporation were and are in *records* and figures as follows, to wit:

Articles of association of the Lexington, Chillicothe and Gulf Railroad Company, made and entered into this 13th day of August, one thousand eight hundred and sixty-nine.

SECTION 1. The name of this association shall be the Lexington, Chillicothe and Gulf Railroad Company, and shall continue for the term of one hundred years.

SECTION 2. The object of this association is the constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property.

SECTION 3. The places from and to which said railroad is to be constructed, maintained, or operated *is* as follows:

Commencing at the city of Lexington, in Lafayette county, Missouri, and thence running southwardly from said city of Lexington, and east of the head-waters of the Little Sni creek, by the way of Mt. Hope, in said county, to Holden, on the Pacific Railroad, in Johnson county, and thence through East Sugar Creek town-
44 ship, in Cass county; thence southwardly in the direction of Butler, in Bates county, and thence southwardly to such point in Bates county as may be found most advantageous to connect said railroad with Fort Scott, Kansas.

SECTION 4. The length of said railroad shall be as near as may be about seventy-five miles, and shall be made into or through the counties of Lafayette, Johnson, Cass, and Bates.

SECTION 5. The amount of capital stock of said company shall be two millions of dollars, divided into twenty thousand shares of one hundred dollars each.

SECTION 6. The names and places of residence of the directors who shall manage its affairs for the first year, and until others are chosen and qualified in their places, —— as follows: Isaiah Nichols, Barney A. Crain, and Hosea H. Moore, Holden, Mo.; Henry V. Stall, Cass county, Missouri; John A. Wilson, Bates county, Missouri; Alex. K. Owens, Bates county, Missouri; Andrew Ritchey, Altoona, Bates county, Mo.; Mitchell Pickett, Butler, Bates county, Missouri; John Reid, J. F. Atkinson, Tilton Davis, Green D. Saterfield, and Chas. L. Ewing, Lafayette county, Missouri.

SECTION 7. This association is organized under and subject to chapter sixty-two and sixty-three of the General Statutes of the State of Missouri.

We, whose names are hereto signed as subscribers to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, hereby promise to be governed by the foregoing articles of association, and to pay the sums set opposite our names to the directors or the authorized agent of the directors of said company, whenever and at such times and places, and in such amounts, as they may call on us so to do.

Witness our signatures, and the amounts thereto annexed, this the 13th day of August, one thousand eight hundred and sixty-nine.

45 *Names of Subscribers.*	*Residence.*	*No. Shares.*	*Dollars.*
F. J. Tygard	Holden	47	4,700
I. Nichols	"	47	4,700
B. A. Crain	"	47	4,700
M. W. Mize	"	47	4,700
H. H. Moore	"	47	4,700
H. V. Stall	Cass Co., Mo.	47	4,700
John Atkinson	Bates Co., Mo.	47	4,700
Alex. K. Owens	Butler, Mo.	47	4,700
Mitchell Pickett	" "	47	4,700
Andrew Ritchey	Bates Co., Mo.	47	4,700
Richard J. DeSamett	" "	47	4,700
John Reid	Lexington, Mo.	47	4,700
Tilton Davis	" "	47	4,700
G. D. Saterfield	Lafayette, Mo.	47	4,700
J. F. Atkinson	" "	47	4,700
Chas. L. Ewing	" "	47	4,700
Mark L. DeMotte	" "	1	100

Be it remembered that on this day came B. A. Crain, H. H. Moore, and H. V. Stall, three of the directors named in the articles of association hereto attached, and upon their oaths state that there has been at least one thousand dollars of stock for every mile of railroad proposed to be made in good faith subscribed thereto, and that five per cent. in cash has been paid thereon to the directors

named in said articles of association in good faith, and that it is intended in good faith to construct, maintain, and operate the road mentioned in said articles of association hereto attached.

B. A. CRAIN.
H. H. MOORE.
H. V. STALL.

Subscribed and sworn to before me, this 20th day of August, 1869.

46 Witness my hand and seal notarial at my office in Holden.

[SEAL.] DAVID NATION,
Notary Public.

OFFICE OF SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Francis Rodman, secretary of State for the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of association of the Lexington, Chillicothe and Gulf Railroad Company, filed August 25, 1869, as appears by comparing the same with the original articles now on file, as the law directs, in this office.

In testimony whereof, I have hereto set my hand and affixed my official seal, done at office, this 25th day of August, A. D. eighteen hundred and sixty-nine.

[SEAL.] FRANCIS RODMAN,
Secretary of State.
By EUGENE F. WEIGEL,
Chief Clerk.

And whereas, also, articles of association were signed and entered into, and the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company duly incorporated thereunder, according to the laws of the State of Missouri, on the 8th day of July, A. D. 1870, and which said articles of association and act of incorporation are substantially in words and figures as follows, to wit:

Articles of association of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company made and entered into this 14th day of July, 1870.

SEC. 1. The name of this association shall be the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, and shall continue for the term of one hundred years.

SEC. 2. The objects of this association shall be the construction, maintaining, and operating a railroad for public use in the
47 conveyance of persons and property, and eventually to consolidate with and form a link in and be a part of the main line of the said Lexington, Chillicothe and Gulf Railroad Company.

SEC. 3. The places from and to which said railroad is to be constructed, maintained and operated are as follows: Commencing on the south boundary line of Lafayette county, in the State of Mis-

souri, in the vicinity of the town of Chapel Hill, in Lafayette county, and thence running southwestwardly from said commencing point along the most advantageous routes, within one-quarter of a mile of the Lone Jack tree, in the vicinity of Lone Jack, in Jackson county, in said State of Missouri, to the city of Pleasant Hill, in the county of Cass, in said State, and thence southwardly along the best and most advantageous route, by the way of the town of Austin, in said Cass county, to such point at or near the south boundaryline of said Cass county as may be found most advantageous to intersect and consolidate with said Lexington, Chillicothe and Gulf Railroad Company.

SEC. 4. The length of said road shall be, as nearly as possible, about thirty-six miles, and shall be made into or through the counties of Johnson, Jackson, and Cass, in said State of Missouri.

SEC. 5. The amount of capital stock of said company shall be one million dollars, divided into ten thousand shares of one hundred dollars each.

SEC. 6. The names and places of residence of the directors, who shall manage the affairs of the company for the first year, and until others are qualified and chosen in their places, are as follows:

Names.	*Residence.*
John W. Reid	Lexington, Lafayette Co., Mo.
John T. Crisp	Independence, Jackson Co., Mo.
Joseph Ragsdale	Near Chapel Hill, Johnson Co., Mo.
John W. Tate	Lone Jack, Jackson Co., Mo.
Daniel Rheem	" " "
Theodore Stanley	Pleasant Hill, Cass Co., Mo.
Chas. B. Dunbaugh	" " "
Clayton Van Hay	" " "
Andrew Allen	" " "
Andrew A. Zick	" " "
W. H. H. Cundiff	" " "
J. H. Nash	Austin, " "
John Crum	" " "

SEC. 7. This association is organized under and subject to chapter 62 and 63 of the General Statutes of the State of Missouri, and the acts of the General Assembly amendatory thereto.

Now, know ye, that we, whose names are hereunto signed as subscribers to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, hereby agree and promise to be governed by the foregoing articles of association, and to pay the sums set opposite our respective names to the directors of said company, whenever and at such times and in such amounts as they may call on us so to do.

Witness our signatures and the amounts thereto annexed, this 16th day of July, A. D. 1870.

Names.	*No. Shares.*	*Amounts.*
James Allen	5	500
Zick & Gosh	10	1,000

&c., &c., making in all the sum of money required by law to be subscribed, and which said articles of association were duly sworn to, and act of incorporation *amend* thereto, and which are as follows:

STATE OF MISSOURI, }
County of Cass, } *ss:*

We, the undersigned, affiants and directors named in the foregoing articles, respectively make oath, and state that the amount of stock required by the third section of chapter 63 of the General Statutes of Missouri has been, in good faith, subscribed, and
49 five per cent. paid in cash thereon, as required in said section, and that it is intended in good faith to construct, maintain, and operate the said railroad, as specified in the foregoing articles of association.

ANDREW ALLEN.
CHAS. B. DUNBAUGH.
W. H. H. CUNDIFF.

Subscribed and sworn to before me, this 18th day of July, A. D. 1870.

RUSH G. LEAMING,
Notary Public.

OFFICE OF THE SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Francis Rodman, secretary of State for the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of association of the Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company, filed in this office on the 18th day of July, 1870, as appears by comparing the same with the original articles of association, now on file, as the law directs, in this office.

In testimony whereof, I hereunto set my hand and affixed my official seal.

Done at office, this 18th day of July, 1870.

FRANCIS RODMAN,
Secretary of State.
By EUGENE F. WEIGEL,
Ch'f Clerk.

And whereas said Lexington, Chillicothe and Gulf Railroad Company have commenced and will soon complete the construction of that part of said last named railroad being within Lafayette county, but find it impossible and impracticable to commence or complete that part of said railroad indicated in the charter of said company, and lying and being in and through the limits of said Johnson county and East Sugar Creek township in Cass county;

And whereas said Pleasant Hill division of said Lexington,
50 Chillicothe and Gulf Railroad Company have commenced the construction of said last named road;

And whereas both said railroad companies have constructed parts of each said respective railroad, and desire the consolidation thereof;

And whereas the line or route of said railroad indicated in the charter of said Pleasant Hill division of said Lexington, Chillicothe and Gulf Railroad Company obviates the obstacles aforementioned, and connects the line of said Lexington, Chillicothe and Gulf Railroad Company in Bates county with that part of said last mentioned road in Lafayette county, and which said two lines of railroads, when completed and connected, will form in the main and whole one continuous line of railroad, and running in the whole as in the main in the same general direction of the line or road indicated in the articles of association of said Lexington, Chillicothe and Gulf Railroad;

And whereas it is desired by, and advantageous to, all concerned in and about said two several railroad companies herein named to consolidate in the whole and in the main and form one company, owning and controlling such continuous and constructed line of railroad, having and possessing all the powers, rights, privileges, and immunities and subject to all the obligations and liabilities to the State or otherwise, which belonged to, or vested in, or vested upon either of said two several companies desiring to make and construct said continuous line of railroad:

Now, therefore, these articles of consolidation and agreements made and entered into and approved and ratified by and between said Lexington, Chillicothe and Gulf Railroad Company, of the one part, and said Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company, of the other part, witnesseth:

That said two several railroad companies are hereby consolidated and formed into one company, with all the powers, rights, privileges, and immunities which belonged to, or vested in, or vested upon either of said companies, upon the following terms, stipulations and conditions, viz:

51 First. The corporate name of this association, or consolidated company, shall be the Lexington, Lake and Gulf Railroad Company, and shall continue for the term mentioned in the original articles of association of said Lexington, Chillicothe and Gulf Railroad Company, and which said consolidated company shall have and continue its office and general place of business at the city of Lexington, La Fayette county, Missouri.

Second. The intention and objects of this said consolidated company shall be the construction, maintaining, and operating a railroad for public use in the conveyance of persons and property, and to form one company, owning and controlling one continuous and connected line of railroad, commencing at the said city of Lexington, in La Fayette county, Missouri, and running thence southwardly along the line and route, as indicated in the articles of association of original Lexington, Chillicothe and Gulf Railroad Company, to the south boundary line of said La Fayette county, in the vicinity of the town of Chapel Hill, in said La Fayette county, and thence, and therefrom, running along the line and road, as mentioned and indicated in the articles of association of said original Pleasant Hill division of said Lexington, Chillicothe and Gulf Railroad Company, to such point in Bates county, Missouri, as may

be required and found most convenient for said consolidated company to demand, receive, and avail itself of the subscriptions heretofore voted to the capital stock of said original Lexington, Chillicothe and Gulf Railroad Company by the township of Grand River and Mt. Pleasant, or either one of them, in said Bates county, and thence to such point in or through said Bates county as may be found most advantageous and convenient to connect with railroads constructed or to be constructed in the State of Kansas, or to extend said consolidated road southward through such counties in the State of Missouri as may be most advantageous to connect,
52 or consolidate same with railroads leading to the States of Arkansas, Texas, or the Gulf of Mexico.

Third. The length of said consolidated road shall be as indicated in the articles of association of said Lexington, Chillicothe and Gulf Railroad Company, or of such length as said consolidated company may hereafter see proper to make, and extend same according to law, and for the present shall be constructed into and through the counties named in said two several companies, and the capital stock shall be two million of dollars, same as stipulated in the original charter of said Lexington, Chillicothe and Gulf Railroad Company.

Fourth. That all certificates of stock of the two several companies shall be called in, and new certificates of stock shall be issued to those owning and entitled to the same, in lieu of the original stock, in the name of the new consolidated company, and all persons who are or may be entitled to certificates of stock in said two several companies, and not having yet received the same, shall have such certificates of stock issued to them upon satisfactory proof and demand in the name of the new consolidated company.

Fifth. Immediately upon the consolidation of said two several companies, as provided by law, said new or consolidated company to have, and shall be empowered and possessed of all and singular the powers, rights, privileges, and immunities, and subject to all the obligations and liabilities to the State with contractors, engineers, or otherwise, which belonged to, or vested in, or vested upon either of the said two several companies hereto making this consolidation, and signing this agreement and articles; and said new or consolidated company to become and constitute one company under the name of the Lexington, Lake and Gulf Railroad Company; that all property and franchises of said two several companies are hereby merged in one company; that the corporate name of
53 said two several companies shall, from the date of the said consolidation, cease, and said new or consolidated company to take and exercise all and singular the rights, powers, and privileges to solicit and receive subscriptions to the capital stock of said new or consolidated company as might or could have been done by said two several railroad companies, or either one of them.

And further, said new or consolidated company to have and possess full and complete power, authority, and right, in law or equity, to demand, sue for, recover, receive, and receipt for all and every such sums as may have been, and are now, or may be, subscribed

to, voted, or pledged to the capital stock of said two several companies, or either one of them, by individuals, counties, townships, towns, or otherwise, so that said consolidated company shall have full power and authority to have, use, and to own all and every the assets of said two several companies, or subscriptions made or to be made, whether absolute or conditional, to the capital stock of said two companies or either one of them, as fully and to all intents or purposes as either of said railroad companies might or could have done and performed had these articles of consolidation never have been concluded and entered into.

Sixth. That said new or consolidated company shall have and be possessed of and with all the powers, rights, privileges, and immunities in the building, operating, construction, and maintaining said new line of railroad that belonged or appertained, in law or otherwise, to said two several railroad companies or either one of them.

Seventh. That the stock now subscribed by individuals residing in the counties of Johnson, Jackson, and Cass to said Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company, as well as the subscriptions now voted by the townships of Pleasant Hill, Polk, and Austin, in said county of Cass, and the township of Van Buren, in the county of Jackson, all in the State
54 of Missouri, shall be expended by said new or consolidated company in the construction of the road-bed and other necessary expenses appertaining thereto, including engineering expenses or any other proper expense, exclusively upon the line and road of said consolidated company through and in the counties of Johnson, Jackson, and Cass, as hereinbefore designated, and then only upon the terms, conditions, and limitations upon which said subscriptions were voted to the capital stock of said Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company, as set forth in the petitions of the taxpayers of said several townships last named to the county courts of said respective counties, asking for said vote and subscriptions.

Eighth. The number of directors who shall manage the affairs of said new or consolidated company shall be thirteen in number, and of which said number, after the next election for directors for said consolidated company, as required by law, seven members and directors thereof shall be residents of, and annually elected from, that portion of country on the line of said railroad north of the south line of said La Fayette county, one from the county of Johnson or Jackson, three from the county of Cass, and two from the county of Bates, or some county south of said county of Bates.

Ninth. The members of the board of directors of said two several companies, who shall be directors in and manage the affairs of said new or consolidated company until such time as elections are required for directors for said consolidated company by law, shall be and are the seven members of the board of directors of said original Lexington, Chillicothe and Gulf Railroad Company now resident of said La Fayette county and constituting the board of directors for said last-named company for said La Fayette county, and six of such members of said board of directors now managing the affairs

and acting in said Pleasant Hill division of the Lexington,
55 Chillicothe and Gulf Railroad Company as may be designated and elected by said directors for La Fayette county in said new or consolidated company, and the offices and functions now had and discharged by said directors of La Fayette county to continue in said consolidated company until the expiration of the terms thereof, and the first meeting of said new board of directors to be had under call of the president thereof, as aforesaid, or any three members thereof.

Tenth. This consolidation of said Lexington, Chillicothe and Gulf Railroad Company and said Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company is formed and entered into under and by virtue of an act of the General Assembly of the State of Missouri, entitled "An act to amend chapter sixty-three of the general statutes, entitled a railroad compensation, so as to authorize the consolidation, leasing, and extension of railroads," approved March 24th, A. D. 1870, and the provisions of which said act have, before the consolidation of said two several railroad companies, been ratified and accepted by each of the said two railroad companies, and also by the stockholders in each of said companies, and the provisions of which said act are hereby and herein accepted and made part of these articles of consolidation.

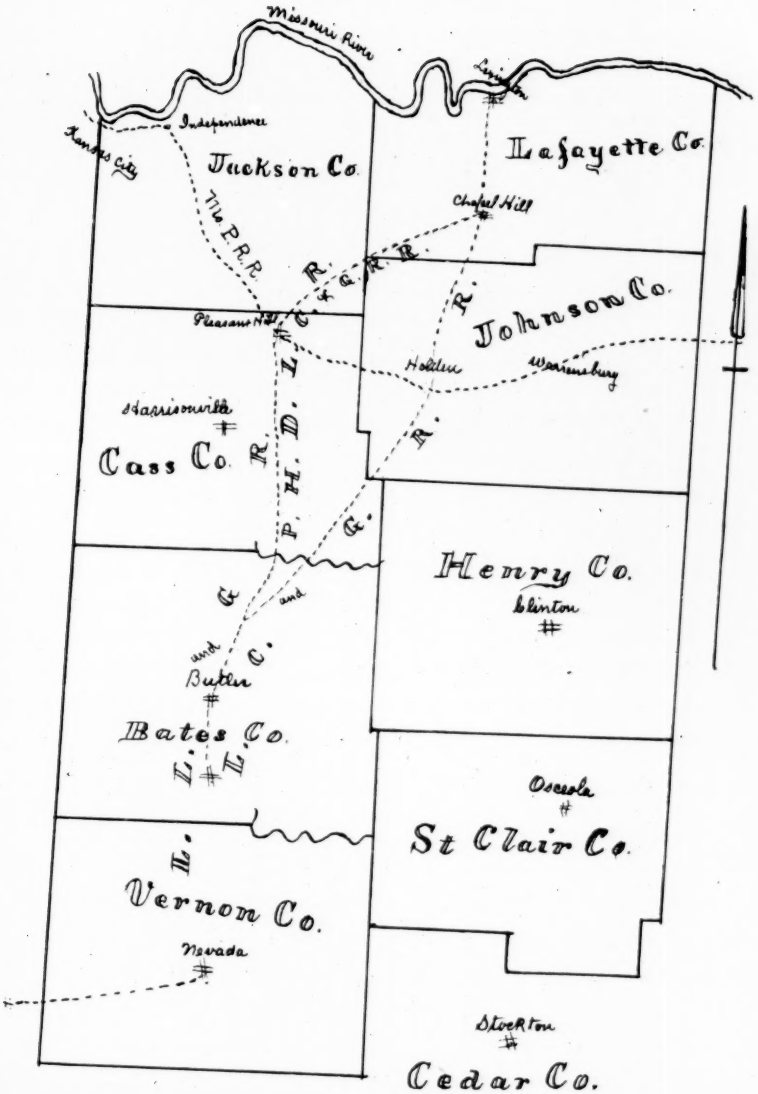
In witness whereof, the said Lexington, Chillicothe and Gulf Railroad Company and said Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company, by their respective presidents thereof, under and by virtue of the resolutions and orders of the respective boards of directors thereof, heretofore had and made, have hereto, respectively, on the days hereinafter named, signed and executed the foregoing articles of consolidation of said two several railroad companies, said articles of consolidation having been agreed upon, and the terms and conditions thereof first having been ratified and approved by a majority in interest of all the stock held in each of said railroad companies, at a meeting of the stockholders of said two several companies regularly called for that purpose.

56 Signed this 26th day of Sept., A. D. 1870, by the said Lexington, Chillicothe and Gulf Railroad Company, by the president thereof, and attested by the seal of said company, and signature of the secretary for the time being, and also signed this 27th day of September, A. D. 1870, on part of said Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company, by the president thereof, and attested by the seal of said company, and signature of the secretary.

[SEAL.] LEXINGTON, CHILLICOTHE AND GULF R. R. CO.,
By JNO. REED, *President.*
GREEN D. SATTERFIELD, *Secretary.*

[SEAL.] PLEASANT HILL DIVISION OF THE LEXINGTON, CHILLICOTHE AND GULF R. R. CO.,
By THEODORE STANLEY, *President.*
JOHN F. LAWDER, *Secretary P. H. Div. L., C. and G. R. R. Co.*

[One dollar int. rev. stamp.]



Bates Co.
No. 390. 17
Winterstal
p. 58.

OFFICE OF THE PLEASANT HILL DIVISION OF THE
LEXINGTON, CHILLICOTHE AND GULF R. R. CO.,
PLEASANT HILL, *Sept. 28th*, 1870.

I, John F. Lawder, secretary of the Pleasant Hill division of the Lexington, Chillicothe and Gulf R. R. Co., do hereby certify that the foregoing articles of consolidation are a true copy of the original made and entered into on the day and dates therein set forth by the respective companies who are parties thereto, as the same appears on the records of the proceedings of this company.

In witness whereof, I hereunto set my hand this 28th day of September, A. D. 1870.

JOHN F. LAWDER,
Sec. P. H. Div. L., C. and G. R. R. Co.

14th. Neither Mt. Pleasant township nor the individual stockholders and directors being in said township had any actual notice of the meeting of stockholders, which was held for the purpose of such consolidation, and at that time no stock had been issued to Mt. Pleasant township, and neither it nor such individual
57 stockholders and directors participated in any manner in the meeting held for the purpose of consolidation.

15th. On the 18th day of January, 1871, the bond set out in plaintiff's petition, together with 89 others, all of the same tenor, was issued to the Lexington, Lake and Gulf R. R. Co.

16th. The plaintiff became the holder of all the bonds and coupons in suit before maturity and for value, without actual notice of the facts pleaded in defence to said bonds, or any notice of any defects in the issue of said bonds, except such as they were bound by law to take notice of, and such as the face of the bonds imparted to them.

17th. Said Lexington, Lake and Gulf R. R. is graded throughout almost its whole length, but has never been completed; the lines and routes of the Lexington, Chillicothe and Gulf R. R. and the Pleasant Hill Division of the Lex., Chillicothe and Gulf R. R. and the Lex., Lake and Gulf R. R. are as indicated on the map:

(Here follows diagaam, marked page 58.)

59 18th. Tilton Davis, the attorney for the Lexington, Chillicothe and Gulf R. R. Co., by the direction of his company, drew up the order of subscription to the Lex., Chillicothe and Gulf R. R. Co. of June 14th, 1870. When Betz came to Lexington he deposited with the Lexington, Chillicothe and Gulf R. R. Co. the copies of the orders of the county court, including the aforesaid order of June 14th, and by order of the board of directors the secretary endorsed on the back of these papers "Filed and accepted June 17th, 1870." Betz was present at the meeting of August 25th, 1870, held at Butler, in Bates Co., when the minutes of the preceding meeting were read and approved.

It is agreed that the foregoing shall be the finding of the facts by the court in this case.

T. K. SKINKER, *For Pl'ff.*
C. C. BASSETT, *For Def't.*

Conclusion of Law.

The court finds, as a conclusion of law, that the foregoing facts constitute no defence to plaintiff's cause of action, and that the plaintiff is entitled to judgment for the amount of the bonds and coupons filed and interest, which is ordered accordingly. To which finding and conclusion of law defendant excepts.

ARNOLD KREKEL, *Judge.*

And afterwards, on the 9th day of April, 1881, it being in vacation of said circuit court, the following proceedings were had in said case, to wit:

Writ of Error Allowed. Citation Signed. Appeal Bond Approved.

VALENTINE WINTERS *et al.*
vs. } 1151.
BATES COUNTY.

This day there was presented to the Honorable Arnold Krekel, judge, a writ of error to reverse the judgment in the above cause, a citation directed to the said plaintiffs, and an appeal bond in
60 the sum of one thousand dollars. Which said writ of error is allowed, said citation signed, and appeal bond approved and ordered to be made part of the record herein.

Said bond as above mentioned is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents, that we, C. C. Bassett, as principal, and S. B. Lashbrooke, as surety, are held and firmly bound unto Valentine Winters and Jonathan H. Winters in the full and just sum of one thousand dollars, to be paid to the said Valentine Winters and Jonathan H. Winters, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fourth day of April, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas, lately at the November term, A. D. 1880, of the circuit court of the United States for the western district of Missouri, eastern division, in a suit pending in said court between Valentine Winters and Jonathan H. Winters, plaintiffs, and Bates County, in the State of Missouri, defendants, judgment was rendered against the said Bates county, and the said Bates County having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Valentine Winters and Jonathan

H. Winters, citing and admonishing them to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., on the second Monday of October next.

Now the condition of the above obligation is such that if the said Bates county shall prosecute said writ to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

C. C. BASSETT. [SEAL.]
61 S. B. LASHBROOKE. [SEAL.]

Approved by—
A. KREKEL, *Judge*.

UNITED STATES OF AMERICA, }
Western District of Missouri, } *Set.:*

Before me, A. Bremermann, a notary public within and for Bates Co., Mo., personally appeared C. C. Bassett, to me well known, who, upon oath, states that he is worth, over and above his indebtedness, the sum of ten thousand dollars, and that he owns real property to that amount, subject to execution, in Bates and Pettis counties, Missouri.

C. C. BASSETT.

Subscribed and sworn to before me, this 4th day of April, 1881.
[SEAL.] A. BREMERMANN, *Notary Public*.
My commission expires Dec. 15, '83.

UNITED STATES OF AMERICA, }
Western District of Missouri, } *Set.:*

Before me, A. Bremermann, a notary public within and for Bates county, Missouri, personally appeared S. B. Lashbrooke, to me well known, who, upon oath, states that he is worth, over and above his indebtedness, the sum of five thousand dollars, and that he owns real property to that amount, subject to execution, in Bates county, Missouri.

S. B. LASHBROOKE.

Subscribed and sworn to before me, this 4th day of April, 1881.
[SEAL.] A. BREMERMANN, *Notary Public*.
My commission expires Dec. 15, '83.

And afterwards, on the 1st day of June, 1881, it being in vacation of said circuit court, the following further proceedings were had in said case, to wit:

VALENTINE WINTERS *et al.* }
vs. } No. 1151.
BATES COUNTY. }

62 This day there is filed an agreement of counsel in reference to the transcript of the record in this cause.

Said agreement, so filed as aforesaid, is in the words and figures following, to wit:

Agreement as to Transcript of Record.

In the Circuit Court of the United States, Eastern Division, Western District of Missouri.

VALENTINE WINTERS and JONATHAN H. WINTERS
against
BATES COUNTY, MISSOURI.

MOUNT PLEASANT TOWNSHIP.

It is hereby stipulated, by and between the attorneys for the parties in the above-entitled cause, as follows:

That the clerk, in making out the transcript to be annexed to the writ of error, shall omit all pleadings filed and proceedings had in this cause prior to the filing and entering the mandate of the Supreme Court of the United States, to wit, August 11th, 1878, and that the transcript made out in accordance with this stipulation shall be deemed and taken as a complete and perfect transcript, as required by the said writ of error.

C. C. BASSETT, *Att'y for Def't.*
T. K. SKINKER, *Att'y for Pl'ffs.*

63 UNITED STATES OF AMERICA, } *Set.:*
Western District of Missouri, Eastern Division, }

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true and complete transcript of the record and proceedings in case No. 1151, of Valentine Winters *et al. vs.* Bates County, (Mount Pleasant Township,) as fully as the same remain on file and of record in my office, except such portions as are omitted under stipulations of counsel, filed June 1, 1881.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of Jefferson, in said district, this sixth day of June, A. D. 1881.

[SEAL.] H. C. GEISBERG, *Clerk.*

Endorsed on cover: W. Missouri C. C. U. S. No. 390. Bates County, Missouri, plaintiff in error, *vs.* Valentine Winters and Jonathan H. Winters. Filed 13th October, 1881.

In the Supreme Court of the United States.

October Term, 1883.

THE COUNTY OF BATES,
Plaintiff in Error,

vs. No. 390.

VALENTINE WINTERS, ET. AL.,
Defendants in Error.

ERROR TO THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

G. G. VEST,
For Plaintiff in Error.

E. P. Moore, Printer and Binder, Kansas City, Mo.

In the Supreme Court of the United States.

October Term, 1883.

THE COUNTY OF BATES,
Plaintiff in Error,

vs. No. 390.

VALENTINE WINTERS, ET. AL.,
Defendants in Error.

ERROR TO THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

This is a suit upon a large number of coupons of $100 each.

The bonds are township bonds issued under the Missouri act entitled "An act to facilitate the construction of railroads.

This same case was once before this court, and was reversed and remanded for trial, the judgement having been for the plaintiffs; at that time a jury having been waived on the trial had after the case was remanded, a trial was had before the court (Krekel, J.) resulting in a judgement being again rendered for the plaintiffs.

There was a special finding of the facts as follows:

1st. On the 5th day of April, 1870, there was filed in the County Court of Bates County, the following petition, signed

by 111 citizens and tax payers of Mt. Pleasant township, in said county:

(See petition in the record, page 14.)

2d. On the 5th day of April, 1870, the said county court made an order for an election to take the sense of the qualified voters of Mt. Pleasant township, in said county, as to whether said township should subscribe $90,000 to the capital stock of the Lexington, Chillicothe and Gulf R. R. Co., which order was as follows, to-wit:

(See order in the record at page 16.)

3d. On the 4th day of May, 1870, such election was held pursuant to such order and resulted in favor of the subscription, and thereupon on the 14th day of June, 1870, said county court made the following order to wit:

(See order in the record, page 18.)

4th. Under said order A. L. Betz, the commissioner therein appointed to subscribe to the capital stock of the Lexington, Chillicothe and Gulf R. R. Co., on the 14th day of June, 1870, went to Lexington for that purpose. He carried with him a copy of the records of said county court, for the purpose of showing his authority to act in the premises. The company then had no stock books on which the subscription could be made, by reason whereof the said Betz did not make the subscription. Thereupon the said Betz sought to withdraw or reclaim the papers he had taken with him, but said company refused to allow him to do so. On the 17th day of June, and the 25th day of August, 1870, the following entries were made on the book of minutes of the proceedings of the board of directors of the Lexington, Chillicothe and Gulf R. R. Co.

(See proceedings in the record, page 19.)

5th. After the 17th day of June, 1870, said Betz again went to Lexington to make such subscription, but after he got

there and saw the condition of the board, he did not make the subscription, and made report to the said county court of his acts and doings on the 19th day of December, 1870, as follows, to wit:

(See said report in the record, pages 24 and 25.)

6th. No subscription of stock was in fact made and signed by said commissioner on the books of the company, and no certificate of stock was in fact issued to said township prior to the consolidation which was made between the Lexington, Chillicothe and Gulf R. R. Co. and the Pleasant Hill division of the Lexington, Chillicothe and Gulf R. R. Co., on the 4th day of October, 1870.

7th. On the 19th day of December, 1870, said county court made the following order:

(See the order of the county court approving report of A. L. Betz in the record, page 25.)

8th. On the 18th day of January, 1871, said county court made the following order:

(See order of subscription to the Lexington, Lake and Gulf R. R. Co. in the record, pages 25 and 26.)

9th. James M. Boreing, the commissioner so appointed on the 18th day of January, 1871, made said subscription on the books of the Lexington, Lake and Gulf R. R. Co., and a certificate of stock then for the first time issued.

This subscription is in the following words:

(See subscription of stock to the Lexington, Lake and Gulf R. R. Co. in the record, page 27.)

10th. The Lexington, Chillicothe and Gulf R. R. Co. was duly incorporated under the general railroad law of Missouri, on the 25th day of August, 1869.

11th. The Pleasant Hill division of the Lexington, Chillicothe and Gulf R. R. Co. was duly incorporated under

the general railroad law of Missouri, on the 18th day of July, 1870.

12th. The said Lexington, Chillicothe and Gulf R. R. Co. and the Pleasant Hill division of the Lexington, Chillicothe and Gulf R. R. Co., on the 4th day of October, 1870, filed, in the office of the Secretary of State, their several acceptances of the provisions of the act of the General Assembly of the State of Missouri, approved March 24th, 1870, authorizing the consolidation of railroads.

13th. On the 4th day of October, 1870, under the said last mentioned act, the said Lexington, Chillicothe and Gulf R. R. Co. and the Pleasant Hill division of the Lexington, Chillicothe and Gulf R. R. Co. filed articles of consolidation in the office of the Secretary of State. (See said articles of consolidation in the record pages 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37.)

14th. Neither Mt. Pleasant township, nor the individual stockholders and directors being in said township, had any actual notice of the meeting of stockholders, which was held for the purpose of such consolidation, and at this time no stock had been issued to Mt. Pleasant township and neither it nor said individual stockholders and directors participated in any manner in the meeting held for the purpose of consolidation.

15th. On the 18th day of January, 1871, the bond, set out in plaintiff's petition, together with 89 others all the same tenor, was issued to the Lexington, Lake and Gulf R. R. Co.

16th. The plaintiff became the holder of all the bonds and coupons in suit before maturity, and for value without actual notice of the facts pleaded in defense to said bonds, or any notice of any defects in the issue of said bonds, except such as they were bound by law to take notice of and such as the face of the bonds imparted to them.

17th. Said Lexington, Lake and Gulf R. R. is graded throughout almost its whole length, but has never been com-

pleted. The lines and routes of the Lexington, Chillicothe and Gulf R. R., and the Pleasant Hill division of the Lexington, Chillicothe and Gulf R. R. and the Lexington, Lake and Gulf R. R. are as indicated on the map.

(See diagram in the record, between page 36 and 37.)

18th. Tilton Davis, the attorney of the Lexington, Chillicothe and Gulf R. R. Co., by the direction of his company, drew up the order of subscription to the Lexington, Chillicothe and Gulf R. R. Co., of June 14th, 1870. When Betz came to Lexington he deposited, with Lexington, Chillicothe and Gulf R. R. Co., the copies of the orders of the county court, including the aforesaid order of June 14th; and by order of the board of directors the secretary endorsed, on the back of the papers, "Filed and accepted June 17th, 1870."

Betz was present at the meeting of August 25th, 1870, held in Butler, in Bates county, when the minutes of the preceding meeting were read and approved.

These are all the facts as found by the court below. As a conclusion of law the court below found for the plaintiffs and rendered judgment against the defendant.

The defenses set up in the answer are:

1st. That the bonds were voted by the township to one company, and the county court, without authority of law, subscribed, issued and delivered them to another.

2d. That the consolidation was irregularly and illegally made and is void in law.

ASSIGNMENT OF ERRORS.

Plaintiff in error for assignment of errors in this cause by the trial court says:

1st. That the conclusion of law of the lower court on the fact found was erroneous and illegal.

2d. That the judgment on the facts found should have been for the defendant instead of for the plaintiff.

G. G. VEST,
For Plaintiff in Error.

BRIEF.

This action is based upon the same bonds that were in controversy in the case of Harshman vs. Bates County, and this is the same case that was tried in this court at its October term, 1877, and the decision was for the defendant, and the case remanded to the court below for new trial.

And the finding of the court below on the new trial is substantially and exactly the same as was in the case when first tried.

And the defense here is based upon the same leading facts and considerations that were involved in the Harshman case, and in this case when it was before this court before; that is to say, there was no vote in favor of the company to which the bonds were issued, hence no power in the county court of Bates county to issue them.

The law of Missouri, touching the authority of county courts to subscribe for stock in railroad companies, and to issue bonds therefor, and upon which the bonds in suit are based, is as follows:

The Constitution of Missouri, Section 14; Article II., prescribes—

"The General Assembly shall not authorize any county, city or town to become a stockholder in or to loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto."

Section 51, Article II., Chapter 37, Wagner's Statutes of Missouri, is as follows:

"Whenever twenty-five persons, taxpayers and residents in any municipal township, for election purposes, in any county in this state, shall petition the county court of such county, setting forth their desire, as a township, to subscribe to the capital stock of any railroad company in this state, building or proposing to build a railroad into, through or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire such subscription shall be made, it shall be the duty of the county court, as soon as may be thereafter, to order an election to be held in such township to determine if such subscription shall be made; which election shall be conducted and returns made in accordance with the law controlling general and special elections, and if it shall appear, from the returns of such elections, that not less than two-thirds of the qualified voters of such township voting at such election are in favor of such subscription, it shall be the duty of the county court to make such subscription in behalf of such township, according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscription, the county court shall issue such bonds in the name of the county, with coupons for interest attached; but the rate of interest shall not exceed ten per cent. per annum; and the same shall be delivered to the railroad company."

Section 56, same article and chapter, is as follows:

"Any two or more railroad companies in this state, existing under either general or special laws, and owning railroads, constructed wholly or in part, which when completed and connected will form in the whole or in the main, one continuous line of railroad, are hereby athorized to consolidate in the whole or in the main, and form one company, owning and controlling such continuous line of road with all the powers, rights, privileges, and immunities, and subject to all the obligations and liabilities to the state, or otherwise, which belonged to or rested upon either of the companies making such

consolidation. In order to accomplish such consolidation, the companies interested may enter into contract fixing the terms and conditions thereof, which shall first be ratified and approved by a majority in interest of all the stock held in each company, or road proposing to consolidate, at a meeting of the stockholders, regularly called for the purpose, or by the approval in writing of the persons, or parties, holding and representing a majority of such stocks. A cartified copy of such articles of agreement, with the corporate name to be assumed by the new company, shall be filed with the secretary of state, when the consolidation shall be considered duly consummated, and a certified copy from the office of secretary of state shall be deemed conclusive evidence thereof. The board of directors of the several companies, may then proceed to carry out such contract according to its provisions, calling in the certificates of stock then outstanding, in the several companies, or roads, and issuing certificates of stock, in the new consolidated company, under such corporate name as may have been adopted, provided, however, that the foregoing provisions of this section, shall not be construed to authorize the consolidation of any railroad companies or roads, except when by such consolidation, a continuous line of road is secured, running, in the whole, or in the main, in the same general direction, and, provided, it shall not be lawful for said roads to consolidate in the whole or in part, when by so doing it will deprive the public of the competition between said roads, and in case any such raiload companies shall consolidate or attempt to consolidate their roads contrary to the provisions of this act, such consolidation shall be void, and any person or party aggrieved, whether stockholders or not, may bring action against them in the circuit court of any county through which said road may pass, which court shall have jurisdiction in the case, and power to restrain by injunction, or otherwise, and in case any railroad in this state shall hereafter intersect any such consolidated road, said road or roads shall have the right to run their freight cars, without

breaking bulk, upon said consolidated road, and such consoldated road shall transact the business of said intersecting or connecting road or roads, on fair and reasonable terms, and the same may be enforced by appropriate legislation. Before any railroad company shall consolidate their roads, under the provisions of this act, they shall each file with the secretary of state a resolution accepting the provisions thereof, to be signed by their respective presidents, and attested by their respective secretaries, under the seal of their respective companies, which resolution shall have been passed by a majority vote of the stock of each, at a meeting of the stockholders thereof, to be called for the purpose of considering the same.

Before the 5th day of April, 1870, over twenty-five tax payers and residents of Mount Pleasant township petitioned the county court of Bates county, setting forth their desire to subscribe $90,000 to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and thereupon the said court orderd that an election should be held in the said township, on the 3d day of May, 1870, to determine if such subscription should be made.

The subscription was carried in compliance with the law.

After the vote was held, on the 18th day of July, 1870, the Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company was organized—it being a new, distinct and separate company from the one to which the voters of the township had signified their desire to subscribe to, and on the 4th day of October, 1870, before the county court had subscribed the $90,000 of stock to the road to which it was voted, the two companies were consolidated, in pursuance with the act of consolidation herein before cited, under the name of the Lexington, Lake and Gulf Railroad Company.

This consolidation was effected with $90,000 of the stock, which had been voted to one of the said companies, not in any manner represented and with no voice as to the said consolidation, or the terms thereof.

The terms of the subscription suggested by the vote of the township required that the road to which the stock was voted was to come by the way of Holden in Johnson county, whereas the road to which the county court made the subscription, upon which these bonds are based, as late as the 18th day of January, 1871, came by the way of Pleasant Hill, in Cass county, full fifteen miles west of the said city of Holden, or in fact adopted the *entire line* of the said *Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company.*

The inquiry is submitted in the light of the decision of this court, in the case of Marsh vs. Fulton County, 10 Wallace 72, and in the later case of Harshman vs. Bates County, where did the county court of Bates county derive their power and authority to subscribe stock for this township to the capital stock of the Lexington, Lake and Gulf Railroad Company, a road which had not been organized and was not in existence when the vote was taken, to ascertain the purpose and desire of the taxpayers and residents of said township.

It may be answered to this, and it seems to be so asserted in the bonds, that the power and authority was by virtue of the action of the two companies, under the consolidation act.

Then why was not this $90,000 of stock permitted to speak with reference to this consolidation?

The result might have been far different, and every thing indicates that it would.

It is claimed by the defense that all efforts at consolidation by the companies, were entirely worthless, so far as to bind Mount Pleasant township, as long as no subscription was made to the capital stock of the company, to which it had indicated a desire to subscribe, more especially as it had no voice in the effort made for consolidation.

See the record in this case, page 37.

"That neither Mount Pleasant township nor the individuals, stockholders and directors, living in said township, had any notice of the meeting of the stockholders, which was held for the purpose of such consolidation, and at that time no stock had been issued to Mount Pleasant township and neither it nor such individual stockholders and directors participated in any manner in the meeting held for the purpose of consolidation.

See also the report of the commissioner, A. L. Betz, as to said subscription, in said record, page 24, and the order of the county court of Bates county, approving said report on the 19th day of December, 1870, six weeks or more after said consolidation was effected, and also this finding on page 25:

"That no subscription of stock on the books of the company was in fact made, and that no certificate of stock was in fact issued to said township, prior to the consolidation hereinafter mentioned, to-wit: the 4th day of October, 1870."

And further at page 26:

"That James M. Boreing, the commissioner appointed by the order of said county court, on the 18th day of January, 1871, made said subscription on the books of the *Lexington, Lake and Gulf Railroad Company*, on or about the 18th day of January, 1871, *and a certificate of stock then for the first time issued.*"

Justice Nelson, in Aspinwall et al. vs. Commissioners of the County of Daviess, 22d Howard, 378, says:

"The election took place on the first Monday of March, 1849, when a majority of the votes was cast for the subscription.

"The Constitution of Indiana took effect 1st March, 1851.

"But the subscription was not made until the 10th of September, 1852, and the bonds were issued after that date.

"It is insisted that the contract of subscription became complete, when at the election, a majority of the votes was cast in its favor, and did not require the form of a subscription on the books of the stock of the railroad company to make it obligatory upon the parties.

"And which, if true, it is agreed the contract would be protected within the constitutiou of the United States, as it would then have been complete, before the constitutional prohibition of Indiana

"The court is unable to concur in this view.

"It holds that *a subscription was necessary to create a contract binding on the county, on one side to take the stock and pay in the bonds, and on the other to transfer the stock and receive the bonds for the same.*

"*Until the subscription is made, the contract is unexecuted and obligatory on either party.*"

In this case, long before any subscription had been made to the road to which these bonds were voted, the company had ceased to exist and was no longer authorized to receive the same, and then the county court assumed for the said township to make a subscription to an entirely different company, and one that was not in existence when the election by the people of the township was held.

And it is contended that the defense in this case is a better and stronger one than that presented to this court in the case of Marsh vs. Fulton County.

Because we say that the road to which the county court of Bates county assumed the power to subscribe, was more distinctly a different road from the one to which Mount Pleasant township voted, than in the case cited, and these bonds are in no sense county bonds.

Bates county, *for and in behalf of Mount Pleasant township therein*, issues these bonds.

If the judgment should stand for the plaintiffs, the taxpayers of Mount Pleasant township must pay it, and not Bates county.

The county court of Bates county was merely selected by the legislature as a meduim through which the taxpayers and residents of the township could act, and the mere ministerial agent to carry out and perform the directions, desires and purposes of the township, as manifested and expressed in the petition which the law required them to file before a vote could be ordered.

The doctrine held in a number of cases when suit has been brought on *county bonds* issued by county courts cannot apply here.

The proposition that the county is the principal, the court, the agent, does not apply here.

The county court here had no general power whatever over this township. It could not act at all until the number of taxpayers and residents required by law had indicated by petition what they desired done, and if a two-thirds vote manifested that they desired a subscription made, then it became the duty of the county court to make subscription in behalf of such township, *according to the terms and conditions suggested by the voters of the township, and to the road named by them.* Thus far the county court was authorized to go, and no further, and any other or further action by it was *ultra vires.* It had neither express nor implied authority to make subscriptions or issue bonds to any other road, or in any other manner than manifested, suggested and directed by vote of the township in accordance with the petition filed, as required by law. But here, in disregard of the direct suggestions of the taxpayers and residents of the township, without giving them an opportunity to express any opinion as to the consolidation effected, and long after this was done, the county court says that this township shall subscribe $90,000 to the capital stock of an en-

tirely different road from the one they desired to take stock in. Certainly the law never intended or contemplated such an immense stretch of authority as this.

And this case clearly comes within the principles decided by this court in the case of Clearwater vs. Meredith, 1 Wall., 26.

The court there says: "The power of the legislature, to confer such authority, cannot be questioned, and without the authority railroad corporations, organized separately, could not merge and consolidate their interests. But in conferring the authority the legislature never intended to compel a dissenting stockholder to transfer his interest because a majority of the stockholders consented to the consolidation.

"Even if the legislature had manifested an obvious purpose to do so, the act would have been illegal, for it would have impaired the obligation of a contract."

II.

If the county court did not possess power and authority derived from the vote of the township under the legislative enactment, hereinbefore quoted, to issue these bonds, then they are void—their collection cannot be enforced against the taxpayers of the township. Floyd Acceptances, 7 Wall., 666; Marsh vs. Fulton county, 10 Wall, 676.

The negotiability of these bonds can have no effect upon the question, as the inquiry turns upon their legal existence.

The act of March 24, 1870, authorizing the consolidation of railroad companies, did not give the county court the power, or authorize it to subscribe stock or issue bonds to the Lexington, Lake and Gulf Railroad Company.

It is claimed that the plaintiff purchased *bona fide*.

He does not stand in the position of an innocent holder

for value. The bond, on its face, shows that it is worthless and invalid—that it was issued without authority—that the county court had no power. Justice Field, in Marsh vs. Fulton County, says: "Purchasers of these bonds *are bound* to look to the action of the officers of the courts and ascertain whether the law has been so far followed as to justify the issue of the bonds." If this doctrine be true, it applies, with peculiar force, to the bonds now under consideration.

And in Harshman vs. Bates County, Judge Bradley says: "Sufficient notice of these objections is contained in the recitals of the bonds themselves, to put the holder on inquiry."

III.

This court will also perceive, from an examination of the record in this case, and the plat filed, that the consolidation, attempted to be effected, was void, as the act authorizing consolidation says: "Provided, however, that the foregoing provisions of this section shall not be construed to authorize the consolidation of any railroad companies or roads, except when by such consolidation, a continuous line of road is secured, running in the whole or in the main, in the same general direction, and provided, it shall not be lawful for said road to consolidate in the whole or part, when by so doing it will deprive the public of the benefit of competition between said roads; and in case any such railroad companies shall consolidate or attempt to consolidate their roads, contrary to the provisions of this act, such consolidation shall be void."

Now the result of this consolidation was to deprive the public of the benefit of competition, as can well be seen, and we suggest this to show how very great and gross were the irregularities committed for the purpose of securing by these two companies all the bonds that they might, whilst holding out the promise to the sections of the country, on each line, that the road would be built, on the route designated by

them, when they cast their vote, under the order of the court. The result was that no road was secured on either line, nor on the consolidated line.

The terms of the subscription, as indicated by their petition, proposed to be made by the taxpayers and residents of Mount Pleasant township, were that the said Lexington, Chillicothe and Gulf Railroad should come from Lexington, by the way of the city of Holden, to the town of Butler, in said township, and that the road should be *completed* and the *cars running thereon* to the town of Butler, on or before the 4th day of July, 1871, or the said subscription and the bonds issued thereon were to be void.

And as a matter of fact, the said consolidated road is not, to this day, completed; not a rail of iron is laid thereon, nor are the cars running to the town of Butler, or on any part of the road south of Lexington, and it is also a fact that no work has been done on this road for over five years.

IV.

Again, it may be claimed, and we suppose is claimed, that the people have ratified the issue of these bonds, by their acquiescence and silence. The silence and assent of the people in the township could not confer the power to issue these bonds. How could it ratify them after they were issued? The power to issue comes only from legislative enactments. The law must be complied with, and the bonds issued as directed by the vote of two-thirds of the voters of the township. If they were issued without autority, the acts of the court issuing them cannot be ratified by the implied assent of the people, nor expressly either. Marsh vs. Fulton County.

The case most strongly relied on by the defendant in error is that of Nugent vs. Putnam County, 19 Wall., 241. And the court below, the time this case was decided by it,

assumed then that its decison in the case of Harshman vs. Bates County would be reversed by this court, because of its decision in the case of Nugent vs. Putnam County, assuming that the cases were parallel, whereas this court well conceived the distinctive differences between the two cases.

The bonds in that case were county bonds. In this case they are township bonds.

In that case the subscription was made to the road to which it was voted prior to the consolidation, and the bonds were issued to the road to which the subscription was made and the county stock was represented in the meeting for consolidation.

In this case no subscription was made to the road to which it was voted. The subscription was made to the consolidated road, and the township stock was not represented in the meeting for consolidation. Subscription was made, after the consolidation, to another and different road, and the bonds were issued to said road.

And in the case of the County of Scotland vs. Thomas, 94 Supreme Ct. Rep., 691, which was decided since the Harshman case, Justice Bradley says:

"The decision of this court in the cause of Harshman vs. Bates County, is urged against this view of the case, but we do not think it is applicable. In that case the question was, whether authority given to the county court, by the electors of a township, to subscribe, in its behalf, for stock in a certain railroad company, continued to exist, after the company had ceased to exist, by being absorbed in another company by consolidation, we held that it did not. The county court was regarded as being the mere agent of the township, having no discretion to act, beyond the precise terms of the power given. The powers of an agent or attorney, authorized to act for another, are very different from those possessed by a person acting in his own behalf, and

the charter of the Alexandria and Bloomfield Railroad Co., authorized foreign corporations to subscribe to its stock (supposing that by the general law of Missouri, they had no such power) they would undoubtedly have retained that power after the consolidation, it being in their discretion to exercise it or not. And if any such foreign corporation had, before the consolidation, sent an order to a firm in St. Louis, to subscribe stock for it in the original company, the firm could not have made the subscription, after the consolidation, without consulting their principal. Such a material change of circumstances would have rendered the subscription an excess of the power given to them.

"Authority given to be exercised, for his own benefit and at his own discretion, may be exercised by him under changes of circumstances that would amount to a revocation of a power given to an attorney, unless it expressly conferred discretion. A recurrence to the opinion in the Harshman case, will show that this distinction underlies the reasons given for the judgment in that case."

Now we say that these words strike the key-note to the defense against the bonds in this case, and we claim that the case at bar is a stronger case in favor of the defense, than that of Harshman vs. Bates County, and just as strong as the one made in this court when it was here before. Here the facts are found, showing that no subscription was made to the road to which it was voted, as required by law; no legal consolidation was ever effected and no road ever built.

And the only possible change in the finding in this case now, and the finding made when it was tried before, is that the records of the Lexington, Chillicothe and Gulf Railroad Company were introduced in evidence to show what? That at the time that the consolidation Betz demanded that the records, which he had placed in the hands of the company, be returned to him, and the company refused to do this. That the said company, on its minutes, attempted to accept

the subscription made by Mount Pleasant township to the said railroad company, when in fact no subscription had been made, and Betz, the very agent appointed by the county court of Bates county to make such subscription, refused to make the same. The court below find that Betz did not make such subscription, and his report is filed and accepted by the Bates county court as late as the 19th day of December, 1870, showing that no subscription up to that time had been made to the railroad company, and, in fact, that no subscription was made until it was done by Boreing, as commissioner, on the 18th day of January, 1871, to the *Lexington, Lake and Gulf Railroad Company.* The fact of the railroad company having entered on their minutes an acceptance of the proposition to subscribe by the county court can make no difference, as Betz, their agent, appointed to make the subscription then and there refused to make the subscription, and demanded a return of his papers, and reported to the county court that he had made no subscription and his report was by the county court approved. And the opinion of this court in Bates county vs. Winters et al., 97 U. S. R. S. C., 83, fully sustains this proposition and settles this case.

Justice Hunt says:

"The order of the county court was not intended, as in the cases referred to, to be final and self-executing. While it recited that the sum named should be and was thereby subscribed; 'it authorized and directed' the agent 'to make said subscription on the stock books of the company' upon the condition specified and to report to the court thereon."

"Having failed for the reasons given by him to make the subscription, the agent reported his doings and "that the bonds of the township are not therefore subscribed," and the county court approved his report."

This is the only information that the county court had of what was done in the matter of such subscription, the

Lexington, Chillicothe and Gulf R. R. Co., never at any time having given any notice of any acceptance of such subscription.

This, however, it could not have done, as no subscription had been made to it, and in fact the only subscription that was ever made was by Boreing as commissioner on the 18th day of January, 1871, and this was to the Lexington, Lake and Gulf R. R. Co.

Upon what theory the court below decided as it did is strange in view of the fact that the case was remanded with directions to proceed in accordance with the views expressed by this court.

And, in conclusion, we say, as has heretofore been said in the Harshman case, and in this case when it was before this court before, that if these bonds are legal, then the vote of the people, indicating to what road they desired to issue these bonds and the route designated by them, amounts to nothing; is a mere nullity, and the county court can change and alter at their pleasure the terms and conditions of the subscription voted.

No subscription was ever made to the company to which the bonds were voted. The people of Mount Pleasant township had no voice in determining with reference to the alleged consolidation of the two roads. The subscription must have been made by the county court to the Lexington, Chillicothe and Gulf Railroad Company, and the voice of the township to the amount of said subscription, must have been heard in the meeting or election, consolidating the two roads.

The defendant can, by no system of reasoning, be held liable for the payment of these bonds.

G. G. VEST,
For Plaintiff in Error.

112-323

In the Supreme Court of the United States.

COUNTY OF BATES,
Plaintiff in Error,
vs.
VALENTINE WINTERS, *et. al.*,
Defendants in Error.

No. ~~3300~~ 78
October Term,
1883.

ERROR TO THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF MISSOURI.

Statement of the Case, Assignment of Errors and Brief for the Plaintiff in Error above named.

GLOVER & SHEPLEY,
Attorneys for Plaintiff in Error.

Pierce Bros., Printers, 115 North Third Street, St. Louis.

In the Supreme Court of the United States.

COUNTY OF BATES,
Plaintiff in Error,
vs.
VALENTINE WINTERS, *et. al.*,
Defendants in Error.

No. 390.
October Term,
1883.

ERROR TO THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF MISSOURI.

Statement of the Case, Assignment of Errors and Brief for the Plaintiff in Error above named.

This is a suit by defendant in error, brought against the County of Bates, to recover a judgment upon certain coupons for interest upon similar township bonds, the coupons of which were involved in Harshman vs. Bates County, 2 Otto, 269.

This case was once in this court from a judgment, then, as now, for the defendants in error, (Bates County vs. Winters, 97 U. S. 83) and, the judgment in the lower court being reversed, it went back for a new trial, whereupon judgment was again entered for the defendants in error, from which, by writ of error, it now comes again to this court.

There was a special finding of facts in the court below as follows:

1st. On the 5th day of April, 1870, there was filed in the county court of Bates County, the following petition, signed

by 111 citizens and taxpayers of Mt. Pleasant township, in said county. (See petition, record 14.)

2nd. On the 5th day of April, 1870, the said county court made an order for an election to take the sense of the qualified voters of Mt. Pleasant township, in said county, as to whether said township should subscribe $90,000 to the capital stock of the Lexington, Chillicothe & Gulf Railroad Co., which order was as follows, to-wit: (See order, record p. 16.)

3rd. On the 4th day of May, 1870, such election was held, pursuant to such order, and resulted in favor of the subscription; and thereupon, on the 14th day of June, 1870, said county court made the following order, to-wit: (See order, Record p. 18.)

4th. Under said order, A. L. Betz, commissioner therein appointed to subscribe to the capital stock of the Lexington, Chilllicothe & Gulf Railroad Co., on the 14th day of June, 1870, went to Lexington, Mo., for that purpose. He carried with him a copy of the records of said county court for the purpose of showing his authority to act in the premises. The company then had no stock books on which the subscription could be made, by reason whereof the said Betz did not make the subscription. Thereupon the said Betz sought to withdraw or reclaim the papers he had taken with him, but said company refused to allow him to do so. On the 17th day of June, and the 25th day of August, 1870, the following entries were made on the book of minutes of the proceedings of the board of directors of the Lexington, Chillicothe & Gulf Railroad Co. (See sundry proceedings in record, pp. 19 and 20, &c.)

5th. After the 17th of June, said Betz again went to Lexington to make such subscription, but after he got there and saw the condition of the board he did not make the subscription, and made report to the said county court of his acts and doings on the 19th day of December, 1870, as follows, to-wit: (See Record, pp. 24, 25, for report.)

6th. No subscription of stock was, in fact, made and signed by said commissioners on the books of the company, and no certificate of stock was, in fact, issued to said township prior to the consolidation, which was made between the Lexington. Chillicothe & Gulf Railroad Co. and the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Co. on the 4th day of October, 1870.

7th. On the 19th day of December, 1870, said county court made the following order, viz: (See order of county court approving report of A. L. Betz, Record p. 25.)

8th. On the 18th day of January, ——, said county court made the following order, viz: (For order of subscription to the Lexington, Lake & Gulf Railroad see Rec.pp.25,26.)

9th. James M. Boreing, the commissioner so appointed, on the 18th day of January, 1871, made said subscription on the books of the Lexington, Lake & Gulf Railroad Co., and a certificate of stock then for the first time issued. This subscription is in the following words: (See subscription of stock to Lexington, Lake & Gulf Railroad Co., Rec. p. 27.)

10th. The Lexington, Chillicothe & Gulf Railroad Co. was duly incorporated under the general railroad law of Missouri, on the 25th day of August, 1869.

11th. The Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Co. was duly incorporated under the general railroad law of Missouri on the 18th day of July, 1870.

12th. The said Lexington, Chillicothe & Gulf Railroad Co. and the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Co., on the 4th day of October, 1870, filed in the office of the Secretary of State their several acceptances of the provisions of the act of the General Assembly of the State of Missouri, approved March 24th, 1870, authorizing the consolidation of railroads.

13th. On the 4th day of October, 1870, under the said

last mentioned act, the said Lexington, Chillicothe & Gulf Railroad Co., and the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Co., filed articles of consolidation in the office of the Secretary of State. (Said articles of consolidation appear in Record, pp. 27 to 37.)

14th. Neither Mt. Pleasant township nor the individual stockholders and directors being in said township, had any actual notice of the meeting of stockholders which was held for the purpose of such consolidation, and at that time no stock had been issued to Mt. Pleasant township, and neither it nor such individual stockholders and directors participated in any manner in the meeting held for the purpose of consolidation.

15th. On the 18th day of January, 1871, the bond set out in plaintiff's petition, together with eighty-nine others, all of the same tenor, was issued to the Lexington, Lake & Gulf Railroad Co. (Copy of bond, see p. 10 Rec.)

16th. The plaintiff became the holder of all the bonds and coupons in suit before maturity and for value, without actual notice of the facts pleaded in defence to said bonds, or any notice of any defects in the issue of said bonds, except such as they were bound by law to take notice of, and such as the face of the bonds imparted to them.

17th. Said Lexington, Lake & Gulf Railroad is graded throughout almost its whole length, but has never been completed; the lines and routes of the Lexington, Chillicothe & Gulf Railroad and the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad and the Lexington, Lake & Gulf Railroad, are as indicated on the map. (See diagram, pp. 36, 37 Record.)

18th. Tilton Davis, the attorney for the Lexington, Chillicothe & Gulf Railroad Co., by the direction of his company drew up the order of subscription to the Lexington, Chillicothe & Gulf Railroad Co., of June 14th, 1870. When Betz came to Lexington he deposited with the Lexington, Chillicothe & Gulf Railroad Co. the copies of the

orders of the county court, including the aforesaid order of June 14th, and by order of the board of directors the secretary endorsed on the back of these papers, "Filed and accepted June 17th, 1870." Betz was present at the meeting of August 25th, 1870, held at Butler, in Bates county, when the minutes of the preceding meeting were read and approved.

These are the facts in full as found by the court below; and thereupon the court, as a conclusion of law; found for the plaintiffs and against the defendant, and, so finding, rendered judgment accordingly. (Record, p. 38.)

The defences set up and relied on may, in brief, be summarized thus:

First. That the bonds were voted by the township to one company in aid of one railroad, and that the county court, long after that, and without any legal right or authority, subscribed the stock issued and delivered the bonds to another.

Second. That the supposed consolidation was irregularly and in contravention of constitution and statute made, and is void and of no effect in law.

ASSIGNMENT OF ERRORS.

The said plaintiff in error, defendant below, now comes and says there is manifest error in said proceedings, and for grounds of such error assigns the following, to-wit:

First. In that upon the pleadings and upon the facts in said cause as found, the court rendered a judgment in favor of plaintiff.

Second. In that upon the pleadings in the cause and upon the facts in said cause, as found by the court, the court rendered a judgment in favor of plaintiff which should have been in favor of defendant, and the conclusion of law on the facts found was erroneous and illegal.

BRIEF.

The law of the state of Missouri respecting the power of county courts to subscribe for the stock of railroad companies and issue obligations for the same, and upon which these obligations involved in this case are based, is as follows:

"The General Assembly shall not authorize any county, city or town to become a stockholder in or to loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto." (Sec. 14, Art. 11, Const. of Mo.)

The statute which is involved in this case (Sec. 51, Art. 2, Chapter 37, Wagner's Statutes) is as follows:

"Whenever twenty-five persons, tax-payers and residents in any municipal township, for election purposes, in any county in this state, shall petition the county court of such county, setting forth their desire, as a township, to subscribe to the capital stock of any railroad company in this state, building or proposing to build a railroad into, through or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire such subscription shall be made, it shall be the duty of the county court, as soon as may be thereafter, to order an election to be held in such township to determine if such subscription shall be made, which election shall be conducted and returns made in accordance with the law controlling general and special elections; and if it shall appear, from the returns of such elections, that not less than two-thirds of the qualified voters of such township voting at such election are in favor of such subscription, it shall be the duty of the county court to make such subscription in behalf of such township, according to the terms and conditions thereof; and if such conditions provide for the issue of bonds in payment of

such subscription the county court shall issue such bonds in the name of the county, with coupons for interest attached, but the rate of interest shall not exceed ten per cent per annum, and the same shall be delivered to the railroad company."

In this connection we here note the provision of the law, Section 56 of same article and chapter, as follows:

"Any two or more railroad companies in this state, existing under either general or special laws, and owning railroads, constructed wholly or in part, which, when completed and connected, will form, in the whole or in the main, one continuous line of railroad, are hereby authorized to consolidate in the whole or in the main, and form one company, owning and controlling such continuous line of road, with all the powers, rights, privileges and immunities, and subject to all the obligations and liabilities to the state, or otherwise, which belonged to or rested upon either of the companies making such consolidation. In order to accomplish such consolidation, the companies interested may enter into contract, fixing the terms and conditions thereof, which shall first be ratified and approved by a majority in interest of all the stock held in each company or road proposing to consolidate, at a meeting of the stockholders regularly called for the purpose, or by the approval in writing of the persons or parties holding and representing a majority of such stocks. A certified copy of such articles of agreement, with the corporate name to be assumed by the new company, shall be filed with the Secretary of State when the consolidation shall be considered duly consummated, and a certified copy from the office of Secretary of State shall be deemed conclusive evidence thereof. The board of directors of the several companies may then proceed to carry out such contract according to its provisions, calling in the certificates of stock then outstanding in the several companies or roads, and issuing certificates of stock in the new consolidated company, under such corporate name as may

have been adopted; provided, however, that the foregoing provisions of this section shall not be construed to authorize the consolidation of any railroad companies or roads, except when, by such consolidation, a continuous line of road is secured, running, in the whole or in the main, in the same general direction, and, provided, it shall not be lawful for said roads to consolidate in whole or in part, when by so doing it will deprive the public of the competition between said roads; and in case any such railroad companies shall consolidate or attempt to consolidate their roads contrary to the provisions of this act, such consolidation shall be void, and any person or party agrieved, whether stockholders or not, may bring action against them in the circuit court of any county through which said road may pass, which court shall have jurisdiction in the case, and power to restrain by injunction, or otherwise; and in case any railroad in this state shall hereafter intersect any such consolidated road, said road or roads shall have the right to run their freight cars without breaking bulk, upon said consolidated road, and such consolidated road shall transact the business of said intersecting or connecting road or roads, on fair and reasonable terms, and the same may be enforced by appropriate legislation. Before any railroad company shall consolidate their roads, under the provisions of this act, they shall each file with the Secretary of State a resolution accepting the provisions thereof, to be signed by their respective presidents, and attested by their respective secretaries, under the seal of their respective companies, which resolution shall have been passed by a majority vote of the stock of each, at a meeting of the stockholders thereof, to be called for the purpose of considering the same."

Previous to April 5, 1870, more than the required number of tax-payers and residents of Mount Pleasant township had signed a petition setting forth their desire to subscribe the $90,000 to the capital stock of a definite Railroad Company, then in existence, viz: The Lex-

ington, Chillicothe & Gulf Railroad Company, located on a definite line and through and to well known points in the vicinity clearly pointed out and defined in said petition, and which petition also set forth what the said Railroad Company was to do on its part. The said court ordered an election for May 3, 1870.

The vote for the subscription prevailed.

After the vote was had, viz: July 18, 1870, a distinct and independent corporation was brought into existence: that is to say, the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company; and on the 4th day of October, 1870, before the county court had subscribed the $90,000 stock to the road to which it had been voted, the two companies were consolidated, said consolidation purporting to be in pursuance of the act of consolidation hereinbefore cited.

The new corporation took the name of the "Lexington, Lake & Gulf Railroad Company."

The $90,000 stock was in no manner represented in the action of consolidation, so far as the county, township, or inhabitants of said township, were concerned, and they had neither notice or knowledge of, or voice in, the same.

As stated, the cause of action sued on are coupons upon bonds, and they are part of the same issue as those upon which the coupons in the case of Harsham vs. Bates County (92 U. S., 569,) were issued. That case came up to this court on a certificate of division of opinion between the judges of the court on a demurrer to petition, and judgment for defendant.

While that case was on its way to this court, the plaintiff in this case, thinking that the case of Nugent vs. The Supervisors (19 Wall., 341), decided subsequent to the Harshman case, was favorable to their views, proceeded to try their case at a subsequent term, and succeeded in convincing the court that this court had, in the Nugent case, established principles which would compel a judgment in fa-

vor of the plaintiffs in this case. Accordingly, the Circuit Court gave judgment in this case for the plaintiffs against Bates County.

Although the court, in the opinion in the Harshman case, had, as one ground for affirming the judgment for defendant, held that the bonds were void for want of constitutional power in the county court to issue them, on the ground that the petition only alleged that two-thirds of the voters voting at the election had favored such issue, whereas, the constitution required a vote of two-thirds of all qualified electors; and though this court did, on a subsequent occasion, viz: in the case of Cass County vs. Johnson (95 U. S. 360), recede from that position, yet the other grounds upon which the decision was based—viz: that no power existing in the county court as trustee for the township to make in its behalf a subscription to a railroad which they had never authorized—has ever remained unshaken. But when this case came up here before from the judgment of the court below for plaintiffs, this court drew the plain lines of distinction between it and the case supposed so strongly to control it, already alluded to, and, holding that in this case there never had been any subscription or obligation to the original corporation voted for, that the order of the county court was not self-executing or effectual without the fact of a subscription, in substance as contemplated by the electors of the township, that the issue of the bonds to one railroad Company was not in such case authorized by the vote to another, and that these objections appeared on the bonds themselves, reversed the court and remanded the cause for a new trial. (Bates County vs. Winters, 97 U. S., 83.)

The court below, however, in the face of the former decision of this court in the case, again rendered judgment against the plaintiffs in error, and from that judgment this case now comes here on writ of error.

It is evident that, as the case was on the former trial, the

former opinion left the defendants in error not a particle of ground to stand upon. But the argument is, and such must have been the opinion of the court below, that certain additional facts, appearing in the record in this case, take it out the operation of the former adjudication.

The facts relied on to work this magic and complete change consist solely of the incorporation into the record in this case of a copy of certain county court proceedings placed on the records of the Railroad Company, as of date of June 17, 1870. (See Record, pp. 19 to 23.)

We expect to be able to show that the facts, as presented and found in this case, for all material purposes are substantially the same as admitted in the petition in the Harshman case, or, indeed, in some respects more favorable, and without fundamental difference from this case when here before.

And we insist now as then upon the utter worthlessness of the attempted subscription and invalidity of the bonds.

I.

There never was any subscription to the stock of the Railroad Company, in favor of which authority was given by Mount Pleasant township.

The petition of tax-payers of that township to the county court of Bates County, set forth their desire to have said township subscribe $90,000 to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company, and thereupon the county court ordered an election to ascertain whether the electors would vote that subscription should be made upon certain conditions and limitations, and upon this proposition it was that the electors and tax-payers voted the 3d of May 1870.

(*a.*) The authority as given to subscribe by the township to the county court was an authority to subscribe to the Lexington, *Chillicothe* & Gulf Railroad Company,

and an authority only to subscribe to that company when it should obligate itself to do certain things; whether the company would ever agree to all these conditions and things could not then be ascertained, but the power to make the subscription depended on such conditions and things fully defined in the petition and order.

(*b*). The county court, by its order June 14, 1870, to its agent (or rather sub-agent as between him and the township) or commissioner (see Record, p. 17), instructed him to make the subscription on the stock books of the company upon the conditions and subject to the terms, instructions and limitations of the order of the 5th of April, 1870 (see Record p. 19), which was the proposition voted for and the only authority conferred.

(*c*). It is evident from the circumstances that the Railroad Company did not at that time desire or intend to have the subscription made. If made, then Mount Pleasant township would be entitled to receive $90,000 in stock, and that would have created a power which might and probably would have prevented what was an annihilation of the company under pretense of consolidation with another road.

(*d*). The facts show that the agent and commissioner, Betz (sub-agent as aforesaid), reported to the county court in due form that he neither made any subscription nor was any place provided for him to do so (Rec., p. 24), and that, in fact, no subscription was ever made to the original Railroad Company during its existence.

In the Harshman case (92 U. S., 569), the authority as given by the vote of the township to the county court to subscribe was stated as absolute: here it is manifestly and pointedly conditional; and those conditions not only appeared in all the papers from first to last, but in the very acts, now relied upon by the defendants in error to save this case from utter annihilation under the authorities, were actually spread out before the face of the Railroad Company upon their own records. (See Record, pp. 19 to 23).

It appears more clearly in this than in the Harshman case that no subscription had been made to the Lexington, *Chillicothe* & Gulf Railroad Company, and that the power given by the township had never been executed up to the time of the consolidation.

What transpired on the 14th day of June, 1870, and thereafter to induce the defendants in error now to boldly insist, in the face of the former decision in this case, that Betz then made a subscription and entered into a mutual and binding obligation for said stock, which subscription, he states in his official report, *confirmed by the county court*, shows he never made, and which obligation he never understood he had entered into, nor so much as surmised that the other parties so understood it.? (See, for approval and confirmation of Betz' report, p. 25 Record.)

And, in closing an entry of authority to Boreing to act in the premises, it appears that the court says, "James M. Boreing *is hereby authorized to subscribe said stock* to said Railroad Company." (Record, p. 26).

And said Boreing proceeded to subscribe for the same. In this case, as we shall have occasion to show further on, the defendants in error cannot shield themselves behind any principle of protection extended to "innocent purchasers." The defects and objections were pointed out in the bonds themselves.

That the bonds would be invalid in the hands of even innocent holders is fully sustained by Marsh vs. Fulton County, (10 Wall. 676), and Harshman vs. Bates County (92 U. S., 569), for want of the vital *principle of authority to issue them*.

In the former case (p. 682) the court says: "A subscription to a company whose charter provided for a continuous line of railroad of two hundred and thirty miles across the entire state was voted by the electors of Fulton County, not a subscription to a company whose line was less than sixty miles in extent and which disconnected from

the other portions of the original line would be of comparatively little value. * * "It is a case where the power to contract never existed, where the instruments might, with equal authority, have been issued by any other citizen of the county." (Citing Floyd Acceptances, 7 Wall., 676).

And in the Harshman case the opinion says (p. 575), "It is contended that this provision of the law (respecting consolidation of lines) justified the county court in making the subscriptions without further authority from the people of the township, but did not the authority cease by the extinction of the company voted for?"

"No subscription had been made, no vested right had accrued to the company." * * *

"So long as it remains unexecuted, the occurrence of any event which creates a revocation in law will extinguish the power."

"The law authorizing the consolidation of the Railroad Companies does not change the law of attorney and constituent."

And we may add that this remark applies as well between the township and the county court as it does between either the county court or township and the acting agent.

When this case was here before, the court brushed aside the attempted application of the principles laid down in Nugent vs. Supervisors (19 Wall., 241) by a few pointed statements, which show how very broad and deep the distinction was in the mind of the court, as follows:

"It is decided in that case that an actual manual subscription on the books of the company is not indispensable, that where an order was made by a county court which said that it subscribed for a specified number of shares of railroad stock, which was accepted by the company, and notice of such acceptance given to the county court, where the minds of the parties met, and both understood that a contract had been made, and where the county court had accepted the position of stockholder, received

certificates of the stock subscribed and voted as a stockholder, that these facts constituted a valid subscription."

Certainly, we should not have the hardihood to deny so logical and palpable a proposition.

But recognizing the utter worthlessness of an act done through commissio er and agent Boreing in making the subscription and accepting the stock, January 18, 1871 (Rec., p. 26), after the original road had ceased for months to have an existence, it is sought to evade the consequences by giving to the act a retroactive effect; and it is claimed that this very formal act of such importance, done with such a display of particularity, was, after all, superfluous and unnecessary, as the acts of the 14th and 17th of June had virtually bound the township, the county court and given the Railroad Company full vested contract rights in the premises.

If such were the case, then—instead of occupying the position which the township supposed it did, and which the county court and the agent supposed they did, when the said court "approved" of the agent's report that he had *accomplished nothing* (see Rec. p. 25), and had made no subscription—the township was then, amazing as it might have seemed had it been so stated to it, an owner of $90,000 of the stock of the company. The county court, though the same was contradicted by every syllable and line of its own records and the official reports of its agents, had carried out the instructions of the township. And the official agent under the statute, the vote and the order, though he had made an utter failure of his mission, and so reported under his solemn official obligation, though he was treated more as a spy than an embassador, and his certificate of authority unjustly and forcibly withheld from him, though he saw no stock-book and subscribed to no stock, though all his conduct like the plain letter of his instructions supposed further action on his part—yet, if this theory be correct, he had in fact accomplished his mission, he had made the sub-

scription, the township had become a stockholder, and all parties occupied the astonishing position of sustaining relations which neither party claimed for itself or charged upon the other. On these theories what inferences might not defendants in error draw from the fact that the Railroad Company chanced to have the manual custody of a package of papers?

This case can have no sort of vitality except as it is attempted to be infused by virtue of the specific additional facts before alluded to as coming from the records of the Railroad Company. Why that action was taken on the 17th of June instead of the 14th, the day of the visit of Betz, the agent, we are not informed; neither are we informed why no notice was given of the action of the company, nor how, nor in what way, nor by whom, the $90,000 interest was represented at subsequent action or meetings of stockholders, or at the time of the consolidation; nor are we informed by what authority they assumed, at the end of three days after the agent's departure under the conviction, that he had come to no understanding with them and entered into no subscription, to "accept" the subscriptions mentioned—in a word, *subscribe to their own stock for him.*

But recurring to the case of Nugent vs. The Supervisors, it will be seen that the case differs from this in the following glaring particulars:

(*a.*) In that case the vote was taken by the county itself for its own purpose, to authorize its own bonds.

In this case, by the township, an independent municipality, to authorize the county court to act in a particular way.

(*b.*) In that case the subscription was in fact and form made to the Kankakee & Ill. River Railroad Co., and the objection was that the bonds were subsequently issued to the consolidated company. In this case the vote was in favor of the Lexington, Chillicothe & Gulf Railroad Company, and the subscription actually made by Boreing, the commissioner, on the books of a corporation having no existence

at the time of the vote, in many of its phases foreign to the purposes of the first—the stock, then for the first time ever seen, delivered, and the bonds passed.

(*c.*) In that case it is expressly stated in the opinion of the court, that no question is made as to the legality of the consolidation, that the charters of both companies authorize it.

In this case it is alleged the consolidation itself is in flagrant violation of the specific constitutional provision, expressly declaring every such consolidation void. (Act March 24, 1870, Wagner's Statutes 314, sec. 56, Laws of Mo., 1870, p. 98).

(*d.*) In that case the subscription had been made and the bonds issued, but not delivered before consolidation.

In this case the bonds were not issued until long after the consolidation, nor until the county court had entered into a new and mutual pretended contract with the new corporation to receive the bonds, and transfer the stock.

(*e.*) In that case the Railroad Company accepted the $75,000 subscription, and gave notice of the acceptance to the Board of Supervisors, which was spread upon their records, whereupon that board adopted a resolution that the subscription was thereby made, and directed the clerk to execute and deliver the bonds.

In this case the Railroad Company pretended not to have, or, in fact, had no place to receive the subscriptions, the agent mistakedly or inadvertently delivered to them the transcript of the records brought along with him for his own purposes, which they refused to surrender on demand, and three days afterward the Railroad Company spread them on their own records in silence, and from that day forward never disclosed the clandestine act to the parties most vitally interested.

(*f.*) In that case the owner of the bonds was "an innocent *bona fide*" holder without notice as stated by the court.

In this case whatever may be the strength of the position of plaintiff in error none of it is lost on those grounds, as the court has distinctly held in this case when here before, as well as in the Harshman case, that the invalidity is shown by the "recitals on the face of the bonds."

(*g.*) In that case the court says (p. 247) there was not only the resolution declaring the subscription made, but there was an acceptance by the Railroad Company and notice of the acceptance. "*The minds of the parties came together, both understood that a contract was made*, so the parties regarded their relations to each other."

In this case, in brief, all these circumstances are negatived.

The above presents some of the more striking objections to an attempt to support this case on the authority of Nugent vs. The Supervisors.

There are cases, it is true, where bonds are held by an innocent *bona fide* purchaser, and where on their face they recite a compliance with all the pre-requisite conditions to validity, the court holds the makers estopped. With these cases and their ligitimate application we have no contention. They are cases where the instruments are not fundamentally void, but irregular in a greater or a less degree, and are to be distinguished in every instance from cases where bonds are void for want of original authority.

"In this case," says the opinion in Bates County vs. Winters (97 U.S.90), "the county court did not intend that the action of the court should be final and self-executing; while it recited that the sum named should be subscribed, it authorized and directed the agent to make said subscription on the books of said company upon the conditions specified, and to report to the court thereon."

"The authorized body of a municipal corporation may bind it by ordinance, which, in favor of private persons interested therein, may, if so intended, operate as a contract." * * *

We know of no case where the mere act of voting a subscription to a Railroad Company where the subscription was to be carried out through the machinery of agencies and second and third parties in a specific manner wherein it has been held that such vote of itself gave any vested right or created any present obligation whatever, and we are confident the rule is exactly the reverse.

II.

It as fully appears in this case as in the former case of Harshman, that the *attempted subscription, as finally made by the county court on behalf of Mount Pleasant township was made to a different Railroad Company from that voted for and authorized.*

When the vote was taken, there was no such railroad corporation in existence as the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company. It was not until the 18th day of July following, that this company was formed, and in view of that, the object of its formation is stated in its charter to be "eventually to consolidate with, and form a link in and be a part of the *main line* of the Lexington, Chillicothe & Gulf Railroad Company," and from what afterwards happened, it is very clear why it was formed. It is termed *a branch* of a railroad, and it begins at the same initial point as the principal, and runs in the same general direction for about thirty-six miles, until the branch and principal line would come together, being nowhere further apart than 15 miles at the furthest point of divergence. The line of the railroad which the township voted to aid run through Holden, with which that *township wished to be in direct railroad connection.* The line of this railroad, incorporated on the 18th of July, two and a half months after, was one that was not advantageous to that township, and for which nobody ever had the hardihood to ask aid. But it was supposed by the railroad manipulators, that as soon as a favorable vote was obtained for one road

it could be made available for another. Their object was to obtain bonds, not to build railroads, and so they set to work to get a charter for a company for a substantially parallel line between two points to that of the one to which aid was voted, and having obtained it, they set to work in flagrant disregard of the plain provisions of the law, and for a fraudulent purpose to attempt consolidation of those two companies. This was attempted to be done on the 4th of October, 1870, two and a half months after this railroad company, called the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, was formed. This consolidation could only have been done under the provisions of the law of the State, and this act (Wagner Statutes of Mo., 314, sec. 56,) expressly provides that it shall not be construed to allow any such consolidation, except when, by virtue of "such *consolidation* a continuous *line of road is secured, running in the whole or in the main in the same general direction*," and also that it shall not be lawful for such consolidation to be made between two railroad companies "when it will deprive the public of the benefit of competition" between roads, and, further, providing that any consolidation contrary to the provisions of the act shall be void.

Here were two causes why these roads could not consolidate. The roads did not form a continuous line in the same general direction, and they were substantially parallel and competing lines. This will be apparent by the plat of the two lines at pages 36, 37 of the record. On the 4th of October, 1870, that organization was effected, so far as filing the papers and taking the steps named in the consolidation act, under the name of Lexington, Lake & Gulf Railroad Company.

It professed to be a consolidation of two railroads, whereas it was an abolition and annihilation of that portion of one with which the other formed a competing line, and the portion of the original line thus annihilated, was the

very portion to obtain which the aid was voted by the township.

But whether this consolidation be good or not, it is not to the stock of that railroad company that the township voted to subscribe. It was a different company with different stockholders, upon a different line, having different resources, having different relations to the Mount Pleasant township, and different bearings upon its prosperity—it might, in the one case, in the judgment of the tax-payers of that township, give promise of being a successful enterprise, and in the other case of being a disastrous one.

But the agent of Mount Pleasant township—the county court—undertook to act for them, and finding that it would not be allowed to subscribe to that company, to which its principle had given it the authority, concluded that it would subscribe for its principal to that company to which its principal had never given it any authority, and so, on the 18th of January, 1871, undertook to make a subscription to this alleged consolidated road of the Lexington, *Lake* & Gulf Railroad Company.

III.

Without wishing to repeat what in part we have anticipated we state here that the county court in making the subscription, was acting only as agent of the township, *and had only such powers and authority as the vote of the township, by the authority contained in the terms of its vote, chose to confer.*

The county was not contracting as a municipality, but by the terms of the act the county court was authorized to act in behalf of, and as agent for, the township, and had just such powers in this matter, and no more, as the township, by the authority contained in terms of its vote, chose to confer.

That the county court was only the agent of the township was fully recognized by this court when the legality of these

bonds was before it in the Harshman case (92 U. S. 569); after stating that the validity of the subscription was resisted on the ground that the township voted to subscribe to one company and the county court subscribed to another, and that this subscription was sought to be justified on the grounds that the former company became consolidated with another, thus forming a third, to whose stock the subscription was made, the decision continued, "And it is contended that this provision of the law justified the county court in making the subscription without further authority from the people of the township. But did not the authority cease by the extinction of the company voted for? No subscription had been made—no vested right accrued to the company."

And in the subsequent case of Scotland County vs. Thomas (94 U. S., 691), the court says, speaking of the powers of this very county court: "The county court was regarded as being the mere agent of the township, having no discretion to act beyond the precise terms of the power given. The powers of an agent or attorney authorized to act for another are very different from those possessed by a person acting in his own behalf."

IV.

The authority, as given by the vote of Mount Pleasant Township to the County Court, was, under certain conditions, to subscribe to the stock of the Lexington, CHILLICOTHE *& Gulf Railroad Company, and to no other*, and that it was not an authority for that court to subscribe to the stock of a road which not only was not the road voted for, but had no existence as a corporation at the time the vote was taken.

At the risk of repetition, we recall the fact that when the vote was taken the corporation, in favor of subscribing to which the vote was given, alone existed; that it was not for

about two and a half months that the railroad, for whose line the subscription was finally made, was created, and not till two and a half months more that the alleged consolida tion was made, to which consolidated roads the subscription was attempted to be made.

That this consolidation (if it be conceded to be valid and effectual) operated as a complete revocation of the power of subscription, has been repeatedly decided by this Court. In the former case of Harshman, the Court, speaking of the effect of such consolidation, says:

"The case of The State v. Linn County Court, *supra*, decides, that if the County Court refuses to issue bonds after making a subscription, a mandamus will lie to compel it to issue them. There the authority had been executed and a right had become vested, but as long as it remains unexecuted, the occurrence of any event, which creates a revocation in law, will extinguish the power. The extinction of the company, in whose favor the subscription was authorized, worked such a revocation. The law authorizing the consolidation of railroad companies does not change the law of attorney and constituent. It may transfer the vested rights of one railroad company to another, upon a consolidation being effected, but it does not continue in existence, power to subscribe stock given by one person to another, which, by the general law are extinguished by such a change. It does not profess to do so, and we think that it does not do so by implication."

In the case of Scotland County vs. Thomas, before referred to, this Court, speaking of the effect of a consolidation, upon authority conferred prior to the consolidation but not exercised, says:

"Had the charter of the Alexandria & Bloomfield Railroad Company authorized foreign corporations to subscribe to its stock (supposing that, by the general law of Missouri, they had no such power), they would undoubtedly have retained that power after the consolidation, *it being in their discre-*

tion to exercise it or not; but if any such foreign corporation had, before the consolidation, sent an order to a firm in St. Louis to subscribe stock for it in the original company, the firm could not have made the subscription after the consolidation without consulting their principals. Such a material change of circumstances would have rendered the subscription in excess of the power given to them. Authority given to a person to be exercised for his own benefit, and, at his own discretion, may be exercised by them under changes of circumstances that would amount to revocation of a power given to *an attorney*, unless it expressly conferred discretion."

So the Court held in the case of Marsh vs. Fulton County, 10 Wall. 676, in relation to a corresponding change in the subscription from the railroad company in question, in favor of which the vote was given, as thus stated at page 252, in the case of Nugent vs. The Supervisors, in 19 Wall.:

"In that case, it appeared that the people of the county voted in November, 1853, in favor of the subscription of the stock for the Mississippi & Wabash Company, and in April, 1854, the board of supervisors of the county ordered the clerk to make the subscription. It was not, however, then made. Subsequently, in 1857, the legislature made fundamental changes in the organization of the company, dividing it substantially into three companies, with a distinct governing body for each, and with three classes of stockholders. It was after this that the subscription was made, and it was made, not for the stock of the Mississippi & Wabash Railroad Company, but for the stock of one of the divisions. Necessarily, therefore, we hold that there is no authority to make the subscription which was made; that it had not been approved by the popular vote, and, hence, the bonds issued in payment of it were invalid."

That the case of Nugent vs. Supervisors, 19 Wall. 252, held no different doctrine, we had occasion to show in case of Harshman vs. Bates County, and as no reference is made

in the decision in the last named case to the former, it is concluded that such was the construction given to the decision in the former case, and it is not necessary now to consider it.

Unless it can be shown that the Supreme Court of the United States has, to some extent, qualified the views thus given, and given, too, in a case in which the legality of the same issue of bonds was in question as in this case, why should we pursue this part of the inquiry further? As we have shown, instead of any doubt having been thrown upon this ground of the decision in the Harshman case, in subsequent cases it has been re-affirmed and strengthened.

The former decision upon the legality of this same issue of bonds must control this case. We have, we think, shown that the facts upon which, as assumed, that decision was based, are here exhibited in a light showing more clearly the illegality and invalidity of this attempted subscription than in that case. If this be so, it is hardly necessary for us to say more.

V.

That no question can arise here as to any protection claimed for the plaintiffs on the ground of being bona fide purchasers of these bonds for value without notice, as by the recitals upon the bonds themselves they were affected with notice of every material fact affecting the validity of the bond.

On the face of the bond it is recited:

1. That the bonds are issued by Bates County for and in behalf of Mount Pleasant township.

2. That they were issued under and pursuant to an order of the County Court of Bates County, in virtue of the act of the General Assembly, approved March 23, 1868, entitled "An act to facilitate the construction of railroads in the state of Missouri."

3. That they were issued in payment of stock, not to the company to which authority was given to subscribe by vote, but to the Lexington, *Lake* & Gulf Railroad, consolidated October 4, 1870.

4. That the order of the County Court of Bates County under which the bonds were issued was authorized by a vote of the people of Mount Pleasant township, taken May 3, 1870, upon a proposition to subscribe $90,000 to the capital stock of the *Lexington, Chillicothe & Gulf Railroad Company.*

5. That the said road (as to the subscription to whose stock the said notes were taken on the 3d day of May, 1870) was, on the 4th day of October, 1870, consolidated with the former Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, into one company, under the name of the Lexington Lake & Gulf Railroad Company.

So that the purchaser of the bond could not, however much he might desire to, shut his eyes, but took it with a full knowledge of how, for what, under what circumstances and under what laws it was claimed to have been issued.

And so was the decision of this court in the Harshman case as to the same bond, where it is said, as hereinbefore stated: "Sufficient notice of these objections is contained in the recital of the bonds themselves to put the holder on inquiry."

"Every dealer in municipal bonds which on their face refer to a statute under which they were issued is bound to take notice of all its requirements." McClure v. Oxford, 94 U. S. 429.

"Where one not an innocent holder took the bonds of the City of Ottawa issued" "to develop the natural resources of the city"– its water-power,etc.,in the absence of special legislative enactment authorizing the issue of them, they were held invalid, though the buyer paid full value, and the city had received the same. Ottawa vs. Carey (108 U. S. 110).

Where the constitution of a State limited the creation of the debt of a city to 5 per cent of its assessed valuation, the debt created, even in pursuance of a statute exceeding that limit, was held illegal and the bonds *void in the hands of an innocent holder*. Buchanan vs. Litchfield (102 U. S. 78).

And same rule laid down in School District vs. Stone (106 U. S. 183).

VI.

The action of the county court in levying and collecting a tax from the township for the purpose of paying the interest of the bonds and the application of it to the part-payment upon one year's interest, cannot validate the bonds if they are illegal, nor estop the county for contesting their legality; more especially as the purchasers of the bonds are affected with notice of all the facts on which their validity depends by the recital on the face of the bonds.

The agent who has exceeded its authority in attempting to bind its principal, is, by means of levying and collecting a tax upon this same principal which it has no power to resist, supposed to confirm this abuse of power, and this shameless fraud upon the people of this township, in fact, as well as law, where no road was built and none intended to be built, because the people of the township were in no situation to prevent their money from being taken from their pockets to pay interest on these illegal bonds.

Where there was on the face of the bonds no recital to put the purchaser upon inquiry, in the case of Marsh vs. Fulton County, this court held that the bonds in the hands of an innocent purchaser without notice, were void, and this when the county had been paying the interest on the bonds for years. In this case there can be no such innocent holder, as by the recital on the face of these bonds he is affected with the knowledge of every fact affecting its validity.

The fact that a tax for the payment of interest had been collected by county court for Mount Pleasant township and the coupons on these bonds for six months interest had been paid, appeared on the face of the petition in Harshman case, but the court paid no attention to that circumstance and held it no estoppel.

As in this case, the court below affirmed the validity of the bond and gave judgment for the plaintiff, we submit that that judgment must be reversed.

GLOVER & SHEPLEY,
Attorneys.

Jno R. Shepley
John M. Glover

112-325

IN THE

Supreme Court OF THE United States

OCTOBER TERM, 1884.

BATES COUNTY, MISSOURI, - *Plaintiff in Error,*

vs.

VALENTINE WINTERS AND JONATHAN H. WINTERS, - - *Defendants in Error.*

STATEMENT OF THE CASE FOR DEFENDANTS IN ERROR.

T. K. SKINKER,
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Counsel for Defendants in Error.

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STATEMENT OF THE CASE FOR DEFENDANTS IN ERROR.

This is a writ of error to reverse a judgment for $95,637.65, obtained by Valentine Winters and J. H. Winters against Bates County, on bonds and coupons issued in the name of said county for Mount Pleasant township therein.

The bonds are in the following form:

No. 56. $1,000.

UNITED STATES OF AMERICA, *State of Missouri, County of Bates:*

Issued pursuant to articles of consolidation in payment of stock due the Lexington, Lake and Gulf Railroad Company consolidated October 4th, A. D. 1880.

Know all men by these presents, that the county of Bates, in the State of Missouri, acknowledges itself indebted and firmly bound to the Lexington, Lake and Gulf Railroad

Company in the sum of one thousand dollars, which sum the said county of Bates, for and in behalf of Mount Pleasant township therein, promises to pay the said Lexington, Lake and Gulf Railroad Company, or bearer, at the Bank of America, in the city and State of New York, on the 18th day of January, A. D. 1886, together with interest thereon from the 18th day of January, A. D. 1871, at the rate of ten per cent. per annum, which interest shall be payable annually on the presentation and delivery, at said Bank of America, of the coupons hereto attached. This bond being issued under and pursuant to an order of the county court of Bates county, by virtue of an act of the General Assembly of the State of Missouri, approved March 23d, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and authorized by a vote of the people taken May 3d, 1870, as required by law, upon the proposition to subscribe ninety thousand dollars to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, and which said railroad company last aforesaid and the former Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company were, on the 4th day of October, 1870, consolidated, as required by law, into one company, under the name of the Lexington, Lake and Gulf Railroad Company, and which said last-named railroad company, as provided by law, and under the terms of said consolidation thereof, possesses all the powers, rights and privileges, and owns and controls all the assets, subscriptions, bonds, moneys, and properties whatever of the two said several companies, or either one of them.

In testimony whereof, the said county of Bates has executed this bond by the presiding justice of the county court of said county, under the order thereof, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court. This done at the city of Butler, county of Bates, this eight-

ceenth day of January, A. D. 1871.

[SEAL.] B. H. THORNTON,

Presiding Justice of the County Court of Bates County, Mo.

W. J. SMITH,

Clerk of the County Court of Bates County, Mo.

[See Record p. 10.]

These bonds were issued under the following statute:

"Whenever twenty-five persons, tax-payers and residents in any municipal township for election purposes in any county in this State, shall petition the county court of such county, setting forth their desire as a township to subscribe to the capital stock of any railroad company in this State, building or proposing to build a railroad into, through or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire it made, it shall be the duty of the county court, as soon as may be thereafter, to order an election to be held in such township to determine if such subscription shall be made; which election shall be conducted, etc., etc.; and if it shall appear from the returns of such election that not less than two-thirds of the qualified voters of such township, voting at such election, are in favor of such subscription, it shall be the duty of the county court to make such subscription in behalf of such township, according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscription, the county court shall issue such bonds in the name of the county, with coupons for interest attached; but the rate of interest shall not exceed ten per cent per annum; and the same shall be delivered to the Railroad Company."

Wagner's Missouri Statutes p. 313 § 51.

The history of the issue of these bonds is as follows:

On the 5th of April 1870 a petition was presented to the County Court of Bates County, signed by the requisite number of resident tax-payers of Mount Pleasant township, praying the Court to order an election in the township for the purpose of ascertaining the sense of the people of the township, as to whether they would or would not subscribe $90,000 to the Lexington, Chillicothe & Gulf Railroad Company.

This petition specified the terms and conditions on which it was proposed the subscription should be made, the principle of which were that it should be paid in bonds of the township; that a Commissioner should be appointed for the purpose of disbursing these bonds, and that this Commissioner should give security for the faithful performance of his duties. [Record p. 14.]

The Court ordered the election as prayed. [Rec. pp. 16, 17.]

On the 3rd day of May 1870, it was held, and resulted in favor of subscription, [Rec. p. 17,] and of that fact the County Clerk made and filed his certificate, and the County Court found it to be true. [Rec. p. 18.]

On the 14th day of June 1870 the court made the following order:

"Now, at this day, is filed in open court the certificate of the clerk of this court showing that on the 3d day of May 1870, an election of the qualified voters of Mount Pleasant township, Bates County, State of Missouri, was held, to obtain the assent of said voters to subscribe the sum of $90,000 to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company, in pursuance of an order of this court submitting a proposition to subscribe said sum, which order was made on the 5th day of April 1870; and the court being satisfied that two-thirds of the qualified voters of said township, who voted at said election, did vote in favor of said subscription, and have given their assent thereto, *it is therefore ordered by the court that the sum of $90,000 be, and the same is hereby, subscribed as stock to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company*, in the name and behalf of Mount Pleasant township in said county, subject to and in pursuance of all the terms, restrictions and limitations of the petition of taxpayers and residents of said township heretofore filed, and the order of this court thereunder so made as aforesaid, on said 5th day

of April 1870, and that A. L. Betz, the agent of this court to represent the interest of this county in said railroad, be, and he is hereby, authorized and directed to make said subscription on the stock-books of said company, and in making said subscription he is ordered to have copied in full the orders made by this court on said 5th day of April 1870, as the conditions on which the same is made, and that he report to this court his acts in the premises aforesaid," [Rec. p. 18.]

This order was drawn up by Tilton Davis, the attorney of the Lexington, Chillicothe and Gulf R. R. Co., by order of his company, for adoption by the court, [Rec. p. 37.]

In pursuance of this order, Betz, the commissioner therein appointed, went to Lexington, the headquarters of the company, and on the 17th of June, 1870, delivered to the company certified copies of all the orders relating to the subscription, [Rec. pp. 18, 37.]

Among the papers thus delivered by Betz to the company was the foregoing order of June 14, in which appear the following words, *to-wit:* "It is therefore ordered by the court that the sum of ninety thousand dollars be and the same *is hereby subscribed as stock to* the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, in the name and behalf of Mount Pleasant Township, in said county, subject to and in pursuance of all the terms, restrictions and limitations of the petition of taxpayers and residents of said township heretofore filed, and the order of this court thereunder so, made as aforesaid on said 5th day of April, 1870," [Rec. p. 22].

The action of the board of directors taken on June 17th, 1870, on the presentation by Betz of this and other orders of the county court, was as follows: "The orders of the Bates County Court, after being read, were ordered by the board to be spread upon the record books of this company, and on motion the subscriptions made and specified in the

aforesaid orders to the capital stock of the Lexington, Chillicothe & Gulf Railroad Company, were accepted by the board of directors of said company," [Rec. p. 23.]

And further the secretary was directed to endorse upon these papers the words, "Filed and Accepted June 17th, 1870."

In pursuance of the directions so given, this endorsement was made, and the copies of the proceedings and orders of the County Court were spread on the book of minutes of the meetings of the board of directors. [Record pp. 19 to 23 and 37.]

At this same meeting (June 17th) Betz was appointed agent of the company to solicit and obtain other subscriptions from counties and townships along the line of the road. [Record p. 19.]

The board then adjourned, subject to call of the president. [Record p. 23.]

It met next, on the call of the president, at Butler in Bates county, on the 25th of August, 1870, Mr. Betz being present. At this meeting the minutes of the previous meeting, containing all the facts hereinbefore recited, were read and approved in his presence. [Record pp. 23, 24, 37.] These minutes, as the record shows, consisted chiefly of the orders of the county court spread at large and the resolution of acceptance by the company.

On the 4th of October 1870, the Lexington, Chillicothe & Gulf Company was consolidated with another company, known as the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Company, the new company taking the name of Lexington, Lake and Gulf Railroad Company.

[Record pp. 27–37.]

The authority for this consolidation is found in the following statute in force at the time of these proceedings.

"Any two or more railroad companies in this State existing under either general or special laws, and owning railroads constructed wholly or in part, which when completed and connected will form in the whole or in the main one continuous line of railroad, are hereby authorized to consolidate in the whole or in the main and form one company owning and controlling such continuous line of road, with all the powers, rights, privileges and immunities, and subject to all the obligations and liabilities to the State or otherwise, which belonged to or rested upon either of the companies making such consolidation. In order to accomplish such consolidation," etc.

Wagner's Missouri Statutes, p. 314, §56.

By the terms of this consolidation the new company had "full and complete power, authority and right, in law or equity, to demand, sue for, recover, receive and receipt for all and every such sums as may have been and are now, or may be subscribed to, voted or pledged to the capital stock of said two several companies, or either one of them, by individuals, counties, townships, towns or otherwise, so that said consolidated company shall have full power and authority to have use and own all and every the assets of said two several companies, or subscriptions made or to be made, whether absolute or conditional, to the capital stock of said two companies or either one of them, as fully and to all intents and purposes as either of said companies might or could have done and performed, had these articles of consolidation never been concluded and entered into."

[Record pp. 34, 35.]

No further action in respect of the subscription was taken either by the company, by Mr. Betz or by the county court until the 19th day of December, 1870—two and a half months after the rights of the original companies had vested in the consolidated company.

Mr. Betz, on this last day, (Dec. 19, 1870) reported to the County Court, without any notice to the company, that he went to the company for the purpose of subscribing "the bonds," and gave the directors the orders to be spread on their books on the 17th day of the preceding

June, but that the company then had no stock-book on which he could make the entry. In this same report he said he called again in August "for the purpose of subscribing said bonds," but he found the directors quarrelling, and he neglected to make the subscription.

On the same day, December 19th, 1870, this report was received by the court, and without any final adjournment but during the same term and within three days thereafter the county court made and entered the following order, to wit:

"Ordered that James M. Boreing be, and he is hereby appointed as commissioner for the sale of the bonds subscribed by Bates county to the Lexington, Chillicothe and Gulf Railroad Company on his entering into bond for $180,000." [See Record p. 25.]

On the 18th day of January, 1871, the county court made the following order:

"Ordered by the court that the bonds of Mount Pleasant, in the matter of issuing said bonds to the Lexington Lake & Gulf R. Co., whereas, heretofore, to wit, May 3, 1870, a proposition was submitted to the qualified voters of Mount Pleasant township, Bates county, in the State of Missouri, as required by law, to vote and subscribe the sum of $90,000 in bonds in the name of said county, in behalf of said township to the capital stock of the former Lexington, Chillicothe & Gulf R. Co., and which said amount of bonds was voted by the people *and subscribed* to the capital stock of said railroad company as required by law.

"And whereas, on the 4th day of October, A. D. 1870, said Lexington, Chillicothe and Gulf Railroad Company, and the former Pleasant Hill division of the Lexington, Chillicothe and Gulf Railroad Company were consolidated and merged into one company, under the name and style of the Lexington, Lake and Gulf Railroad Company, as provided by law:

"And whereas, by authority of the provisions of law, and under and pursuant to the terms and conditions of said consolidation, said Lexington, Chillicothe and Gulf Railroad Company, and said Pleasant Hill division of said company, have ceased to exist by name, and said Lexington, Lake and Gulf Railroad Company was formed by said consolidation, and possessing all the powers, rights, franchises, privileges and immunities, and owning and controlling all the assets, subscriptions, bonds, moneys and properties whatever of the said two several railroad companies forming said consolidated company, or either one of them, together with the power, right, and authority in law and equity, given said Lexington, Lake and Gulf Railroad Company to have, demand and sue for and recover, receive and receipt for all and every, the assets, bonds, and subscriptions made to the capital stock of said two companies making said consolidation, and especially said bonds of said Mount Pleasant township, and as fully and to all intents and purposes as said Lexington, Chillicothe and Gulf Railroad Company might or could have done had said consolidation never been formed and entered into as aforesaid.

"Now, therefore, be it ordered by the county court of Bates County that said sum of ninety thousand dollars in bonds, being ninety bonds of one thousand dollars each, be issued in the name of said Bates County, for and in behalf of said township of Mount Pleasant, payable to said Lexington, Lake and Gulf Railroad Company, or bearer, in *payment and satisfaction of said original subscription as aforesaid.*

"And be it further ordered, that said bonds be issued as aforesaid, and signed by the presiding justice of this court, and attested by the clerk thereof, and that the seal of this court be affixed to said bonds; and also that the coupons attached to said bonds be signed by said clerk of this court, all of said bonds to be dated as of this day, and of which said bonds thirty shall be due in ten years from date, thirty

in fifteen years from date, and the remaining thirty in twenty years from date, each for one thousand dollars, payable at the Bank of America, in the City and State of New York, with coupons for interest attached, at the rate of ten per cent. per annum.

"And further ordered that said bonds be delivered to James M. Boreing, commissioner, and the proceeds thereof by him paid over to said Lexington, Lake and Gulf Railroad Company, or their agents, according to the terms and conditions of said subscription herein referred to, and said bonds numbering from one to ninety, inclusive, said James M. Boreing is hereby authorized to subscribe said stock to said railroad company." [Record pp. 25, 26.]

In this order it will be observed that the County Court recites that the bonds had been "voted by the people and subscribed to the capital stock of the said railroad company, (to-wit, the Lexington, Chillicothe and Gulf,) as required by law."

On the same day (January 18th, 1871) Boreing made and signed a subscription on the stock-book of the Lexington, Lake and Gulf Company. [Record p. 27.]

In pursuance of the foregoing orders and proceedings the bonds were issued, and the proceeds expended in the construction of the road, which was graded almost the entire length, though never completed. Plaintiff is a purchaser for value. [Rec. p. 37.]

There is no charge of fraud or misappropriation of the bonds, and aside from the alleged failure to make the subscription prior to the consolidation, no complaint of any irregularity in the proceedings, except that the township had no *actual* notice of the meeting at which the consolidation was agreed upon, and took no part in it. [Rec. p. 37]

The statute in force at that time authorized notice of

stockholders' meetings to be given by publication in a news paper.

Wagner's Statutes p. 290, §§ 9, 10.

BRIEF.

I.

There was a subscription to the Lexington, Chillicothe & Gulf Company consummated before the consolidation took place, and this subscription passed by virtue of the consolidation to the Lexington, Lake & Gulf Company, and authorized the issue of the bonds in suit.

When this case was here before (97 U. S. 83, 90) it was held that the bonds were void, because the record, as it then stood, did not show that a contract of subscription was consummated before the consolidation took place.

Mr. Justice Hunt, delivering the opinion of the court, said:

"The county court did not intend their action to be final, and did not understand that a subscription was thereby completed. Their vote was a declaration that the power to subscribe should be exercised, and was an authority to their agent to perfect a contract with the railroad company on the conditions set forth. No acceptance was made by the railroad company, no notice of acceptance was given, nor was there any act or fact which afforded a pretext for saying that the railroad company was bound by the contract of subscription. While it refused to allow the agent to withdraw his evidence of authority, it said nothing and did nothing to indicate that the minds of the parties had met upon the terms of a subscription. The county court was precise and particular in requiring those conditions to be copied in full on the books of the company, as

the conditions on which the subscription was made, and there could be no mutual contract until the railroad company assented on its part to those conditions.

"At a subsequent time, (January 18, 1871,) when it had determined to issue bonds to a different company, and apparently as its justification for so doing, the county court recited that a subscription had been made to the Chillicothe road. It at once, and in the same order, contradicted and repudiated this recital by directing a subscription for $90,000 of bonds in the Lexington and Lake Railroad Company. If the subscription had been made before to the one road, there was no occasion or authority for a subscription to another road. This historical statement furnishes no satisfactory evidence of an actual or legal subscription in June, 1870. We are of opinion that the action of the county court on the 14th of June, 1870, did not constitute a subscription to the stock of the Lexington, Chillicothe & Gulf Railroad Company and that the case of the Messrs. Winters is fatally defective, under the ruling of Harshman v. Bates County, in this: that the popular vote gave authority to subscribe to the Lexington, Chillicothe and Gulf Railroad Company, while the subscription was made and the bonds issued to a different company, to wit, to the Lexington, Lake and Gulf Company."

The evidence then before the court consisted of the order of June 14th, and proof that Betz, the agent, went to Lexington and delivered the subscription papers to the company on the 17th of June, and that when he sought to retake them the company refused to let him have them. It is this evidence which this court pronounced insufficient to show a consummated subscription.

In addition to this evidence the present record shows that the order of June 14th was drafted by the attorney of the railroad company by direction of his company, and, after being submitted to and adopted by the county court, and

presented back to the company on the 17th of June in the shape of a certified copy, was by order of the board, spread upon the minute book of the company, along with all the other orders and proceedings of the county court relating to the subject; that the subscription was on the same day formally accepted by the company by resolution of the board, which was likewise spread upon the minutes; that the papers brought by Betz were by order of the board marked by the secretary, "Filed and accepted;" and that the minutes of the proceedings of the 17th of June were at a subsequent meeting held at Butler, in Bates county, on the 25th of August, 1870, read and approved by the board, Betz being present.

The consolidation took place October 4th, 1870.

The present record, therefore, shows a subscription completed before the consolidation. It shows that the company indicated in advance its intention to accept, that it did formally accept when the documents were presented, and that the agent of the township had the amplest notice of the acceptance—all more than two months before the consolidation took effect.

It may be objected that the county court was entitled to formal notice of acceptance, and that the notice received by Betz, by seeing and hearing the proceedings of the board are insufficient. We do not think such an objection tenable. Betz was specially deputed to act in the matter for the township, and was therefore the proper person to receive notice. If he had signed the subscription on the stock-book, the mere act of the company in permitting this to be done would have operated as a notice of acceptance, and would have affected his principal with the same force as the most formal notification; the duty would have devolved upon him of informing his principal. What was done is not less effectual. The resolution of the board certainly imparted to his mind knowledge of the intentions of the

company quite as clearly as if he had signed the stock-book. It was not addressed to him, but was adopted in his presence, and afterward read and approved in his presence, and its terms certainly could not have been misunderstood. That the knowledge thus communicated by some means reached the county court is evidenced by its orders of December 22d, 1870, and January 18, 1871. In the first of these Boreing is appointed commissioner for the sale *of the bonds subscribed by Bates County to the Chillicothe, Lexington & Gulf Railroad Company*, on his entering into bond for $180,000. In the second it is recited that said amount of bonds ($90,000) was voted by the people, and *subscribed to the capital stock of said Lexington, Chillicothe & Gulf Railroad Company* as required by law, and again in the same order it was directed that said sum in bonds be issued to the Lexington, Lake & Gulf Railroad Company *in payment of said original subscription*.

But it does not seem to be established by the authorities that formal notice, or indeed any notice, of acceptance need be given by the company in order to make such a subscription binding.

In Nugent vs. The Supervisors, 19 Wall. 253, Mr. Justice Strong said: "The financial agents of the county agreed to make the subscription, and the company accepted it" before the consolidation; and upon this he predicated the validity of the bonds.

So in Moultrie Co. v. The Savings Bank, 92 U. S. 631, there was nothing but an undertaking by the county to subscribe, and an *implied* acceptance by the company. There was no pretense of any notice of acceptance. Yet this court held there was a binding contract, saying (at page 635):

"These cases," [Nugent's and others], "lead directly to the conclusion that the action of the Board of Supervisors in December, 1879, was in substance and in legal effect a subscription; and if this conclusion could not be reached,

it would make but little difference to the present case, for it could not be doubted that the action of the board was at least an undertaking to subscribe, and this was assented to or accepted by the railroad company. *The resolutions were entered on record by the clerk and president of the railroad company*, and the company made an appropriation of the bonds to be received in payment of the subscription by a contract made on the 15th of April, 1870. In either aspect of the case there was an authorized contract existing between the county and the railroad company when the new constitution came into operation."

In several later cases there was no notice of acceptance shown, yet the bonds were held valid in spite of an intervening consolidation.

Menasha v. Hazard, 102 U. S., 81.
Harter v. Kernochan, 103 U. S., 562.
New Buffalo v. Iron Company, 105 U. S., 73.

In the present case, when it was here before, Mr. Justice Hunt mentioned, in his opinion, among the things that were not shown to have been done, that "no notice of acceptance was given;" but does not in express terms hold notice to be essential, and in the light of the foregoing cases could hardly have so held.

But if notice was required, it is not necessary that it should have reached the county court before the consolidation took place: the contract was complete from the day of acceptance. As the court sat at Butler, and the railroad company had its headquarters at Lexington, seventy-five miles distant, the transaction bears some resemblance to a negotiation by letter. In such cases the established rule seems to be that the contract dates from the time when notice of acceptance is received.

Speaking of a contract by letter, this court has said:

"The fallacy of the argument, in our judgment, consists

in the assumption that the contract cannot be consummated without a knowledge on the part of the offerer that the offer has been accepted."

Tayloe v. Insurance Company, 9 How., 400.

In Mactier v. Frith, 6 Wend.,103, it was held that "from the moment when the minds of the contracting parties meet, signified by overt acts, the contract is obligatory, although the fact of such concurrence is not known to both parties. A bargain may be considered as closed when nothing mutual between the parties remains to be done to give either a right to have it carried into effect."

The facts of the case were briefly these: Frith, in San Domingo, made a proposal by letter to Mactier in New York. Mactier accepted by letter, but before his letter reached Frith, Mactier died. Frith claimed that there was no contract, on the ground that notice of Mactier's acceptance was necessary, and his death having intervened before he (Frith) received the letter of acceptance, the matter was cut short, and no contract was concluded. The court conceded that if knowledge of the acceptance was necessary, there was no contract, for the death would have the effect ascribed to it, but upon full examination of the questions involved, held that the contract took effect from the moment the acceptance was signified by the overt act of mailing the letter, and the supervening death of Mactier did not change the relation of the parties.

Here the consolidation operated to extinguish the original company—was its civil death; but before that event took place it had signified its acceptance by the overt act of passing a resolution of acceptance and having the same read in the presence of the agent for the township. The reading in his presence, if it is not a good notice to the township, is at least an "overt act" within the rule in Mactier v. Frith, for it furnishes the township evidence of the fact of acceptance.

As before shown, the county court knew on the 22d December that the subscription had been accepted by the original company. It does not appear when it became possessed of that knowledge, but if it were conceded that it was not until after the extinction of the company, still under the authority of the cases above cited that would be sufficient.

In cases arising under the Township Aid Act, of Missouri the contract of subscription ought to be held, for a reason peculiar to that act, to date from the moment of acceptance. Under that act, the county court has but one duty to perform. The act declares that if it shall appear from the election returns that the requisite majority have voted in favor of subscription, "it shall be the duty of the county court to make such subscription * * according to the terms and conditions thereof." This language is peremptory, not permissive—mandatory, not directory. No power is given to propose other terms, to withhold action, or, having offered the subscription, to withdraw the offer. The whole power and duty of the county court is to make the subscription on the terms and conditions voted by the people.

Piatt v. The People, 29 Ills. 65.
The People v. Logan Co., 63 Ills. 387.
Allison v. Louisville &c., Ry. Co. 10 Bush, 2.

In Piatt v. People, 29 Ills. 65, Breese J. said: "The act of 1859, under which the election was held in this case, provides that 'in all cases where such election shall result in favor of the subscription herein authorized, it shall be the duty of the supervisor of such township to make such subscription, and to receive from said company the proper subscription therefor; he shall also execute, in the corporate name and under the corporate seal of said township, the bonds of said township, and deliver the same to the president of said company. Such bonds shall be signed by the supervisor.' (Laws 1859 p. 228.)

"It will be seen that the supervisor has no discretion, should the vote be favorable to the subscription.

"The act is mandatory—'it shall be the duty of the supervisor to make such subscription'—he 'shall' also execute the bonds and deliver them. Such bonds 'shall' be required by the supervisor. His act is ministerial only, having no judgment to render and no power to adjudicate. Stronger language of command need not be used."

In People v. Logan, 63 Ills., 387, it is said: "It is also urged that the county cannot be compelled to subscribe for stock in the railroad company. The 13th section of the charter imposes it as a duty on the Board of Supervisors to make such subscription, without unnecessary delay, after the vote has resulted in favor of subscription. The language of the law is peremptory, and leaves no discretion to be exercised by the board of supervisors when the majority in a legal election has so determined." The 13th section referred to reads as follows: "If it shall appear that a majority of all the voters voting at any such election as may be held under this act, have voted for subscription, it shall be the duty of the county court to subscribe without unnecessary delay." Private Laws Ill., 1867, vol. 2, p. 703.

In Allison v. Louisville, &c., Ry. Co., 10 Bash, 2, an act ordained: "That the county court of Jefferson County subscribe for 1,250 shares of the capital stock of the Louisville, Harrod's Creek & Westport R. R. Co., in behalf of Harrod's Creek precinct, and issue to said railway company, in payment therefor, the coupon bonds of said precinct, in denominations," &c.

The court said: "The duty imposed upon the county court is purely ministerial, and from the language of the section quoted, it seems evident that said court was invested with no discretion, but was required, as the agent of the General Assembly, to do a given act, the propriety of which

had already been passed upon by the law-making power."

In the feature now under consideration there is a striking difference between the Township Aid Act and the law governing county subscriptions—section 17, page 305, Wagner's statutes—which provides, that if the qualified voters assent, "*it shall be lawful* for the county to take stock," &c. This undoubtedly leaves it in the discretion of the court to subscribe or not, as they see fit. Construing a special enabling act, in which the words were, "the county court shall have power to subscribe," provided the subscription was first authorized by a vote of the people, the Supreme Court of Missouri, at its February term, 1867, said that the act did not make it imperative on the county court to subscribe when the people had voted in favor of subscribing because it did not say "it shall be its duty to make the subscription"—the very language employed in the Township Aid Act. St. Joseph & D. C. R. R. Co. v. Buchanan County Court, 39 Mo., 489, 490.

The Township Aid Act was passed in February, 1868, just one year after this decision was rendered.

To the exercise of the power conferred by this act, there is, of course, one condition necessarily implied, viz.: the company must consent. To carry out the vote of the township, it is the duty of the county court to obtain this consent. The moment it is obtained the two minds have met and the contract is complete. Not only, we may add, is it beyond the power of the court, of their own motion, to withdraw or refuse to make the subscription, but they cannot even be authorized to do so by a second vote of the people, for the law does not authorize the holding of an election for any such purpose. If held it would be a nullity, and any proceedings taken under it would be void.

Goddin v. Crump, 8 Leigh, 156.
McKune v. Weller, 11 Cal., 49.
McCrary on Elections, § 121.

Practically, therefore, a favorable vote of the people amounts, of itself, to a tender of subscription which may be accepted by the railroad company without the intervention of any action of the county court. This is apparent from the consideration that if that body fails to make the subscription in due form, the duty can be enforced by mandamus.

Section 22, page 306, Wagner's Statutes provides:

"Any county court, city council or trustees of any town refusing to perform any of the duties required of them by this chapter" [the chapter on railroads] "may be proceeded against by writ of mandamus, to be sued out of the circuit court of the county."

It follows that when the county court has made the order and the company have, in any manner, accepted the terms, nothing further remains to be done. The court can do nothing (and in the present case attempted nothing) in the way of rescission or retraction. Neither can the company. In other words there is an obligation perfect and binding upon both parties.

In the quotation already made from the opinion of Mr. Justice Hunt, in this case, it is said:

"The county court did not intend their action to be final, and did not understand that a subscription was thereby completed. *Their vote was a declaration that the power to subscribe should be exercised.*" We respectfully submit that this language reveals a grave misconception of the Township Aid Act in the particular under discussion. It implies that the court might have declared or decided otherwise. We have shown that it was their imperative duty to subscribe, and they had no power to decline. If they had been invested with a discretion, it might well be said that their intention to make a present subscription ought to be manifested with certainty before the township should be bound. But being under an imperative obligation, language or conduct much less positive than that shown in this case ought to be construed into obedience.

Looking at the statute in this light, it could hardly be said that the declaration that the sum of $90,000 "is hereby subscribed" was a mere expression of a purpose to authorize the making of a subscription, simply because it is coupled with a resolution appointing an agent to transcribe it on the company's books.

Laying out of view, therefore, all the evidence of positive and direct notice to the county court and to the township, through agent Betz, that the subscription had been accepted, we still have conclusive proof that there was a contract made on the 17th of June—months before the consolidation.

Does the fact that Betz did not sign the stock-book militate against this conclusion?

We submit that it does not.

1. As we have already shown, it is the duty of the county court to subscribe according to the terms and conditions voted by the people. Having no discretion in the premises, they could, of course, clothe their agent with none. Hence the order of June 14th cannot be interpreted as evincing an intention to subscribe only in the event that Betz determined to sign on the stock books of the company. Betz seems, by his report, to have taken this view, and to have supposed his signature essential to the execution of the contract. The truth is that when he delivered the certified copies to the company, thus officially notifying them of the action of the court, and the company accepted the proposed terms, all was done that was essential.

2. The order of June 14th directs Betz "to make said subscription on the stock-books of said company." Observe! It does not in express terms require him to sign it. It does say that he shall "have copied in full the orders made by this court as the conditions on which the same is made."

The obvious purpose of this was to prevent any possible misunderstanding as to what the terms and conditions were. This was the essential thing, and this was accomplished without Betz's signature.

3. But concede that it was expected he would sign, the signing was but a mode of evidencing the contract. As was said by Wagner, J., in Hannibal & St. Joseph R. R. Co. v. Marion Co, 36 Mo. at p. 304:

"The substantive act was taking the stock; that was evidenced by the order of record made by the county court, and the appointment of an agent to make the entry on the company's books and receive the certificates was a proper and convenient way for carrying out the details. The agent did not make the contract: it was made by the county court, and he was a mere instrument to execute the order."

There were two orders in this case, the first made at the February term 1862, the second at the next term of the county court.

The first was as follows:

"This day comes R. F. Lakeman, Esq., on behalf of the directors of the Hannibal and St. Joseph R. R. Co., and moves the court to subscribe one thousand shares of stock to said railroad company in behalf of Marion county. Thereupon it is considered by the court that said stock be taken and that ———— is appointed the agent to subscribe for said stock, and John D. S. Dryden and A. W. Lamb are hereby appointed attorneys to draw up a form for the bonds to be issued in payment for the said one thousand shares of stock, and submit the same to this court on the first Monday in March next."

The blank left in this order for the agent's name not having been filled, the second order was made as follows:

"Whereas it appears to the satisfaction of the court that

an order made on the 4th day of February last, in regard to the county subscribing 1000 shares to the Hannibal & St. Joseph R. R. Co., has never been carried into effect, in consequence of the court failing to appoint an agent to subscribe the same, it is therefore ordered that John Rice Esq., the president of this court be and he is hereby appointed the agent of this court to subscribe for said stock according to the order before referred to."

It was in reference to these orders that the above quoted language of Judge Wagner was used. Neither of them, it, will be observed, uses words which in terms express a present subscription, like those used in the order of June 14th now in question: "It is ordered by the court that the sum of $90,000 be *and the same is hereby subscribed*." Nevertheless Judge Wagner says that the subscription "was evidenced by the order of record made by the court."

This decision was made in 1865, and was the law of Missouri when the subscription now in question was made. Under it, it can not be doubted that the agent's signature to the stock-book was but a proper formality and not an essential. Indeed this case goes further. It shows that the order of June 14th was a subscription, without more.

The purpose of the county court, in appointing Betz, was to have the will of the township, as expressed by the vote, carried out, by securing the assent of the company to the subscription. If the company permitted him to transcribe and sign the orders of the court upon its books, it thereby signified its assent in an unequivocal way, and the object of the vote was attained. This was, therefore, a proper means for the court to adopt, but it was only a means; acceptance by the company was the end. This end has been attained. Does it matter if the prescribed mode of attaining it was not strictly followed?

In Eliason v. Henshaw, 4 Wheat. 225, a contest arose as to the mode of consummating a contract. The defendant, being

at the time near Harper's Ferry, Va., wrote to the plaintiff, who lived some twenty miles away, proposing on behalf of his firm, to buy flour to be delivered at defendant's store in Georgetown, D. C. He sent the letter by a wagoner, saying in a postscript: "Please write by return of wagon whether you accept our offer." Plaintiff accepted by letter mailed to Georgetown, which reached defendant about two weeks after the offer was made, instead of two days, as it would have if it had come by return of the wagon. In the meantime defendant had bought other flour, and when plaintiff's came defendant declined to receive it. In an action upon the supposed contract of purchase the court held the defendants not liable on account of the delay, but as to the mode of making known the acceptance, the court said:

"To the letter containing this offer they required an answer by return of the wagon by which the letter was dispatched. This wagon was at that time in the service of the plaintiff, and employed by him in hauling flour from his mills to Harper's Ferry, near to which place the defendants then were. The meaning of the writers was obvious. They could easily calculate by the usual length of time which was employed by this wagon in traveling from Harper's Ferry to Mill Creek, and back again with a load of flour, about what time they should receive the desired answer, and, therefore, *it was entirely unimportant whether it was sent by that or another wagon, or in any other manner*, provided it was sent to Harper's Ferry and was not delayed beyond the time which was ordinarily employed by wagons engaged in hauling flour from the plaintiff's mill to Harper's Ferry.

In Conn v. McCollough, 12 Mo. App. 356, the defendant with others, had signed a paper, entitled, "Bonus Subscription to the Southern Hotel Company of St. Louis," by which each of the subscribers bound himself to pay to Nicholson, Wells and Bent, assignors of the plaintiff, the sum set opposite his name, "in consideration of the advantages that will

accrue to each of us in consequence of the re-building of the Southern Hotel, and for the purpose of inducing persons to take stock in the company to be organized for the purpose of re-building said hotel." No company was ever organized, but the hotel was re-built by an individual, Thomas Allen. It was held by the St. Louis Court of Appeals, reversing the Circuit Court, that the re-building of the hotel was the ultimate end had in view by the subscribers, that the formation of a company was contemplated as a means to that end, but only a means and not an essential means, that the consideration of defendant's agreement had therefore not failed, and that plaintiff was entitled to recover.

In Bonnewell v. Jenkins, 38 L. T. N. S. 581, B. wrote to estate agents in whose hands J. had placed a leasehold property for sale: "In reference to Mr. J.'s premises, I think £800 for the lease, fixtures, etc., is about what I should be willing to give. Possession to be given within fourteen days from date." The agents, having received authority from J. to accept the offer, replied: "We are instructed to accept your offer of £800 for these premises, and have instructed Mr. J.'s solicitor to prepare contract." Held that the reference to the preparation of a formal contract did not prevent the two letters from constituting a binding contract.

Baggalay, L. J. said: "If the letter of the defendant's agent had stopped at the end of its first clause, no doubt could have been entertained that there was a binding contract. Then follows the reference to the preparation of a formal contract. The signature of such a contract may be made a condition precedent to the existence of any binding bargain; but the letter must be expressed in such a way as to show clearly that such a condition is intended."

In Rossiter v. Miller, 37 L. T. N. S. 14, there was an express stipulation for the signing of a formal contract,

and it was held that the parties were not bound, because none had been signed, although the letters which had passed between them were in all other respects sufficient to constitute a binding contract.

In Riggins v. R. R. Co., 73 Mo. 598, it was held that when parties make and sign a memorandum of agreement with the understanding that a formal contract embracing the same stipulations, is thereafter to be written out and executed, if they afterward act upon the memorandum it will be treated as a valid and binding contract, though never written out in a formal manner.

These cases sufficiently show that where the essential purpose of the contracting parties has been attained, or where the acts and writings of the parties are otherwise sufficient, the contract is binding even if all the formal details have not been carried out as intended. If, therefore, the object of the court in appointing Betz was secured when the orders were spread on the minute books of the company and the subscription was accepted, it is immaterial that he never signed the stock book, even though it was the intention of the court that he should do so.

Mr. Justice Hunt, in his opinion, adverts to Betz's report of the 19th of December, which concludes with the declaration that "the bonds of said township are, therefore, not subscribed,," and seems to lay some stress on the fact that this report was approved. This approval, we submit, if it stood alone, could have no legal significance as a ratification of the agent's refusal to subscribe; for as before shown, it was beyond the power of the county court to make such ratification. But it does not stand alone; for coupled with it is an order made at the same term appointing Boreing commissioner to take charge of the bonds, which it is declared have already been subscribed to the old company. Construed together, as they must be, can these

orders be interpreted to mean that the county court understood that no subscriptien had been made and intended to express their approval of this? If so, how do we explain the appointment of Boreing and the requirement that he shall give a bond in the sum of $180,000? The proposition voted on by the people required the county court to appoint a suitable and competent person commissioner to receive and sell the bonds, after entering into bond to the court for the faithful performance of his duties.

It seems perfectly clear that the appointment of Boreing and the re uirement of a bond in exactly double the amount of this subscription had reference to this clause of the proposition, and was made upon the theory that the proposition had been agreed to by both sides; and hence it is in terms declared that the bonds have been subscribed.

What then does this approval mean? It is simply a complaisant expression towards Mr. Betz, who had served without pay, and, according to his own report at least, had been zealous to guard the interests of the township. The court could hardly dismiss him with less than a "Thank You," and this is all that this expression of approval amounts to.

The fact that the county court, in the order of January 18th, 1871, directs the new commissioner to make a subscription on the books of the consolidated company, ought not to be taken as evidence that the court understood that none had been made to the original company; for it several times declared the contrary. It understood that the steps which had been been taken amounted in law to a subscription, but as Betz had not signed on the stock book, the usual evidence of membership in a corporation was wanting. It was this that it was intended Boreing should supply.

II.

If there was no subscription consummated before the consolidation, there was at least a tender of subscription, the right to accept which was a privilege of the Lexington, Chillicothe & Gulf Company. This privilege passed by the consolidation to the Lexington Lake and Gulf Company, and the latter company was entitled to receive the bonds.

We have already shown that under the Township Aid Act a vote in favor of subscribing imposed upon the county court an absolute duty to subscribe. The railroad company had but to signify its acceptance, and the bargain was closed, regardless of the court. That which needs but an acceptance to make the contract complete is a tender. The mere vote itself, therefore, under this act, is a tender.

But if this be doubted, certainly the other steps taken in this case were sufficient, viz: the entering on the county records of the order of June 14th, and the depositing of the certified copies with the company. The company had by law the right or privilege of accepting this offer. The Consolidation Act provided that all rights and privileges of the constituent companies should pass to the new company and vest in it. No exception was made, and nothing in the nature of this privilege took it out of the statutory rule.

Harter v. Kernochan, 103 U. S. 562.
New Buffalo v. Iron Company, 105 U. S. 73.
Smith v. Clark County, 54 Mo. 58.

Attempt may be made to distinguish the cases of Harter v. Kernochan and New Buffalo v. Iron Company, on the ground that they involved donations, and not subscriptions. As to their quality of transferability there is no distinction between these two forms of municipal aid.

Town of Concord v. Savings Bank, 92 U. S. 625.
County of Moultrie v. Savings Bank, 92 U. S. 632.

If there were any it could not operate against the plaintiffs here, for the courts will certainly not look less carefully to see that the bonds go to the right company, where there is an out and out gift, than where stock is received in return which at least may be worth something.

Attempt may also be made to base a distinction on the fact that the townships in Illinois and Michigan are municipalities with full corporate powers, whereas those of Missouri, at the time this subscription was made, were mere political subdivisions of the county without corporate powers.

This can make no difference. The township authorities under the one system and the county court under the other alike have their powers and duties defined by statute. If their acts fall within the statutory limits they are valid, otherwise void. The inquiry must, therefore, always be whether the statute gives the power, and upon this question the municipal organization or want of organization can throw no light. In Illinois and Michigan the statutes directed the township officers to act for the township; in Missouri, for want of proper township officers, it directed the county court to act. Both were to execute the will of the township as expressed by a vote of the electors. They were, therefore, alike, agents of the township.

The consolidation acts of Illinois and Michigan are essentially the same as that of Missouri.

In the cases cited they were construed to vest in the consolidated company the privilege of the constituent company to accept donations voted by the people, but for which no actual contract had been made before consolidation.

We think the Missouri act ought to receive the same construction.

In Missouri "the counties are not full corporations in the absolute and unqualified sense of that term, but mere polit-

ical subdivisions for governmental purposes; and the county court acts under the direction of the statute in such manner and according to such terms as may be prescribed by the legislature."

Steines v. Franklin County, 48 Mo. 167, 188.

In another case it is said: "A county is a territorial subdivision, a *quasi* corporation, and is invested with corporate powers for certain purposes.

Reardon v. St. Louis County, 36 Mo. 560.

As a municipal organization, a Missouri county occupies a middle grade between the township of Missouri, which has no corporate attributes, and the townships of Illinois and Michigan which have full corporate powers.

This court has to the fullest extent applied to county bonds the principle that the privileges of the constituent companies pass to the consolidated company.

Greene County v. Conness, 109 U. S. 104, and numerous earlier cases.

III.

The fact that the township received no actual notice of the meeting at which the consolidation was effected is immaterial.

Nugent v. Supervisors, 19 Wall 251.

Sparrow v. R. R. Co., 7 Porter (Ind.) 369.

Bish v. Johnson, 21 Ind. 289.

The statute allowed the notice to be given by publication in a newspaper.

Wagner's Statutes, p. 290, §§ 9, 10.

IV.

The claim that the consolidation, which brought the Lexington, Lake and Gulf Company into being, was irregu-

larly and illegally made. amounts to a plea of *nul tiel corporation*, and is inadmissible in this action. Kayser v. Trustees of Bremen, 16 Mo., 90; Smith v. Clark Co., 54 Mo., 81; Macon County v. Shores, 97 U. S. 272.

Having contracted with the Lexington, Lake and Gulf Company, as a corporation, Mount Pleasant township cannot now deny its corporate existence. Camp v. Byrne and the Packet Company, 41 Mo., 525; Farm. and Merch. Ins. Co. v. Needles, 52 Mo., 18; O. & M. R. R. Co. v. McPherson, 35 Mo., 13. Studebaker Bros. Man'f'g Co. v. Montgomery, 74 Mo. 101.

Respectfully submitted,

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